

**THE STATE OF THE U.S. MARITIME INDUSTRY:  
STAKEHOLDER PERSPECTIVES**

---

---

**HEARING**

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION  
AND MERCHANT MARINE INFRASTRUCTURE,  
SAFETY AND SECURITY

OF THE

COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

---

APRIL 20, 2016

---

Printed for the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PUBLISHING OFFICE

22-129 PDF

WASHINGTON : 2016

---

For sale by the Superintendent of Documents, U.S. Government Publishing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

JOHN THUNE, South Dakota, *Chairman*

ROGER F. WICKER, Mississippi	BILL NELSON, Florida, <i>Ranking</i>
ROY BLUNT, Missouri	MARIA CANTWELL, Washington
MARCO RUBIO, Florida	CLAIRE McCASKILL, Missouri
KELLY AYOTTE, New Hampshire	AMY KLOBUCHAR, Minnesota
TED CRUZ, Texas	RICHARD BLUMENTHAL, Connecticut
DEB FISCHER, Nebraska	BRIAN SCHATZ, Hawaii
JERRY MORAN, Kansas	EDWARD MARKEY, Massachusetts
DAN SULLIVAN, Alaska	CORY BOOKER, New Jersey
RON JOHNSON, Wisconsin	TOM UDALL, New Mexico
DEAN HELLER, Nevada	JOE MANCHIN III, West Virginia
CORY GARDNER, Colorado	GARY PETERS, Michigan
STEVE DAINES, Montana	

NICK ROSSI, *Staff Director*

ADRIAN ARNAKIS, *Deputy Staff Director*

REBECCA SEIDEL, *General Counsel*

JASON VAN BEEK, *Deputy General Counsel*

KIM LIPSKY, *Democratic Staff Director*

CHRIS DAY, *Democratic Deputy Staff Director*

CLINT ODOM, *Democratic General Counsel and Policy Director*

---

SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT  
MARINE INFRASTRUCTURE, SAFETY AND SECURITY

DEB FISCHER, Nebraska, <i>Chairman</i>	CORY BOOKER, New Jersey, <i>Ranking</i>
ROGER F. WICKER, Mississippi	MARIA CANTWELL, Washington
ROY BLUNT, Missouri	CLAIRE McCASKILL, Missouri
KELLY AYOTTE, New Hampshire	AMY KLOBUCHAR, Minnesota
JERRY MORAN, Kansas	RICHARD BLUMENTHAL, Connecticut
DAN SULLIVAN, Alaska	BRIAN SCHATZ, Hawaii
RON JOHNSON, Wisconsin	EDWARD MARKEY, Massachusetts
DEAN HELLER, Nevada	TOM UDALL, New Mexico
STEVE DAINES, Montana	

## CONTENTS

---

Hearing held on April 20, 2016 .....	Page 1
Statement of Senator Fischer .....	1
Statement of Senator Booker .....	3
Statement of Senator Wicker .....	4
Statement of Senator Klobuchar .....	32
Statement of Senator Blumenthal .....	33
Statement of Senator Thune .....	36

### WITNESSES

Mark McAndrews, Port Director, Port of Pascagoula and Chairman Elect, American Association of Port Authorities (AAPA) .....	5
Prepared statement .....	7
Perry M. Bourne, Director, International Transportation and Rail Operations, Tyson Foods, Inc. on behalf of the Agriculture Transportation Coalition .....	9
Prepared statement .....	11
Michael G. Roberts, Senior Vice President and General Counsel, Crowley Maritime Corporation .....	14
Prepared statement .....	16
Klaus Luhta, Chief of Staff, International Organization, Masters, Mates & Pilots .....	23
Prepared statement .....	24

### APPENDIX

Comments dated May 3, 2016 from the Global Consolidators Working Group: Caro Trans International, Inc., Ecu-Line N.V., Shipco Transport Inc. and Vanguard Logistics Services (USA), Inc. ....	39
Letter dated May 4, 2016 from Robyn M. Boerstling, Vice President, Infra- structure, Innovation & Human Resources Policy, National Association of Manufacturers to Chairman Thune, Ranking Member Nelson, Chairman Fischer and Ranking Member Booker .....	43



## **THE STATE OF THE U.S. MARITIME INDUSTRY: STAKEHOLDER PERSPECTIVES**

---

**WEDNESDAY, APRIL 20, 2016**

U.S. SENATE,  
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND  
MERCHANT MARINE INFRASTRUCTURE, SAFETY AND SECURITY,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 10:20 a.m. in room SR-253, Russell Senate Office Building, Hon. Deb Fischer, Chairman of the Subcommittee, presiding.

Present: Senators Fischer [presiding], Ayotte, Sullivan, Thune, Wicker, Booker, Klobuchar, Schatz, and Blumenthal.

### **OPENING STATEMENT OF HON. DEB FISCHER, U.S. SENATOR FROM NEBRASKA**

Senator FISCHER. The hearing will come to order.

Good morning, everyone. I am very pleased to convene the Senate Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security for today's hearing entitled "The State of the U.S. Maritime Industry: Stakeholder Perspectives."

This is the second in a series of hearings examining the maritime industry as we prepare legislation to reauthorize the Maritime Administration at the Department of Transportation.

America's maritime transportation system plays a crucial role in our economy. After all, time is money in today's global market. Productive shipping is key to reducing costs for manufacturers, consumers, workers, and businesses of all sizes.

As a global leader, the United States needs an efficient and reliable intermodal freight transportation network to help our economy grow and create new jobs. As freight flows continue to increase, the United States maritime fleet and our ports are critical to keeping America competitive in this global market.

According to the American Association of Port Authorities, domestic and foreign freight volumes passing through our ports rose to a high of 2.4 billion tons in 2014. The Bureau of Transportation Statistics notes that freight tonnage on our Nation's transportation network will grow by 40 percent over the next 30 years.

Meanwhile, deepwater seaports represent a key element of our logistics network. In fact, America's seaports often serve as the key connection points for all modes of transportation.

Last year, I convened a hearing to examine our West Coast ports, which at the time were mired in gridlock. According to annual

averages, these ports are responsible for 12.5 percent of U.S. gross domestic product.

Congress must continue to prioritize our Nation's ports and avoid massive congestion like we saw last year. Disruptions at our Nation's ports can be felt all across this country.

In fact, last year, several major manufacturers in Nebraska, in the middle of the country, had to reduce or halt operations due to interruptions at our ports. We need an all-of-above solution to keep freight flowing and update our Nation's ports infrastructure.

Data is key to ensuring our ports retain their place as global leaders. That is why I worked with Chairman Thune to incorporate provisions in the recently passed highway bill, which will secure greater information on the performance of our ports.

It is also important to take advantage of rapidly accelerating technology. Recently, I led a congressional delegation on a visit to Australia. There, we turned an automated privately run terminal at Port Botany in Sydney, Australia. Botany is home to Australia's largest port, which utilizes technology to create more efficient supply chains for shippers.

In the spring of 2015, the loading and unloading of ships at Port Botany became fully automated. This was accomplished by using radar-based navigation, which allowed robotic carriers to maneuver containers across the port terminal.

Similarly, the Port of Rotterdam, the largest seaport in Europe, has adopted automated operations in collaboration with Maersk, which is a private shipping company.

Around the world, ports are working with stakeholders from the private sector to take advantage of the innovative technologies. This is allowing these ports to better manage wait times and move cargo.

Looking ahead, the Panama Canal expansion is likely to be completed in the coming months. The canal's expansion will allow it to facilitate container ships with almost triple the current capacity. America must ensure that its ports are ready for this massive expansion of container vessels.

Last month, Senator Booker and I convened a hearing with our government stakeholders to gather more information about our maritime network. We heard from the U.S. Merchant Marine Academy on how we can strengthen sexual assault prevention programs within that academy. We hope to keep our midshipmen safe by including meaningful reforms to address this challenge in the MARAD reauthorization bill.

The Department of Transportation's Office of Inspector General discussed ways that Congress can strengthen the management of important programs and resources at MARAD. We are currently working on legislation to help address MARAD's management gaps and ensure it can focus on the important mission of facilitating our critical maritime shipping transportation system.

Today, we will hear from a knowledgeable panel of witnesses with diverse and informative views on the state of the maritime industry. Today's hearing will focus on the current trends, opportunities, and challenges. This will help us to understand how Federal policy can enhance the performance of our maritime transportation system.

We are fortunate to have shipping carriers, maritime laborers, port representatives, and agriculture producers represented on our panel this morning. And I thank each of you for joining us today, and I look forward to a very good discussion on these critical transportation matters.

With that, I would now invite Senator Booker to offer his opening comments.

**STATEMENT OF HON. CORY BOOKER,  
U.S. SENATOR FROM NEW JERSEY**

Senator BOOKER. Thank you very much, Chairman Fischer.

I want to begin, as I always do, with thanking her for her leadership and for holding this hearing on this critical role in maritime industry in our Nation and, frankly, to deal with our Nation's economy.

This hearing is timely. As folks know, Senator Fischer and I are preparing to introduce our second maritime reauthorization bill. I am pleased to see another truly bipartisan piece of legislation that is moving forward in this committee, and I am proud to work with Senator Fischer on leading on what I think is a good model, not just for the urgency within the Commerce Committee, but finding bipartisan solutions in the Senate as a whole.

This country's ports, vessels, and Merchant Marine forces are absolutely critical to our Nation's economic growth and military preparedness and disaster relief efforts. These are things I know personally.

Our Nation's ports and maritime terminals, as well as the rail and road networks that support them, are essential for getting American products to overseas markets and generating U.S. jobs and driving economic growth.

Residents of my state of New Jersey know this well. New Jersey is home to the Port of New York and New Jersey, which has moved more than 120 million tons of cargo every year in recent years and is the busiest port on the East Coast. Overall, New Jersey ports and trade industries that rely on them employed 285,000 people in New Jersey in 2014 and generated \$60 billion in family incomes and business revenues in the New Jersey economy.

Over the past 5 years, the public and private sector have helped to fund more than \$2 billion in infrastructure improvements as the Port of New York and New Jersey is expanding its capacity in the region. This is in addition to the \$1.3 billion invested by the port to raise the roadway of the Bayonne Bridge to allow the larger and taller ships that serve our region.

While investments like these are essential and offer long-term benefits to our regional economy, they cannot by themselves reduce the congestion caused by our Nation's outdated infrastructure. That is why I am proud to work with this committee and proud of the work that this committee did last year to pass the FAST Act and establish the Nation's first multimodal freight grant program. While this was a substantial achievement, and, again, a bipartisan effort by this committee, more work remains to be done.

For many decades, the United States has relied upon the U.S. Merchant Marine, with its fleet of commercial vessels and crew of U.S. mariners to assist the military during times of war or national

emergency. But as the U.S. international fleet has diminished, U.S. mariners lose employment and the opportunities to remain certified to crew large ocean-going vessels. As we lose U.S. mariners, we lose sealift capacity to support the U.S. military during times of war or national disasters.

However, there are ways for us to combat this decline, practical ideas such as continuing to support and increase funding of MARAD's maritime security program, which ensures that 60 military U.S. vessels are readily available to carry military cargos.

We also need long-term strategies that bolster and support all sectors of the U.S. maritime industry, including protecting the Jones Act, which provides our country with a skilled domestic maritime workforce, aids shipbuilding throughout the country, and ensures a domestic fleet to support our country in times of need.

I look forward to hearing from each of our witnesses today about these and other issues that the Committee should consider as we work to improve our Nation's maritime transportation system. This is something that all Senators are concerned about, and I am glad that we are holding this forum now.

Senator FISCHER. Thank you, Senator Booker. I would now ask my friend and colleague from Mississippi, Senator Wicker, to introduce one of his constituents, who is a member of our panel today.

**STATEMENT OF HON. ROGER F. WICKER,  
U.S. SENATOR FROM MISSISSIPPI**

Senator WICKER. Thank you, Madam Chair.

It is an honor to actually be here and introduce Mark McAndrews.

But before I do that, I want to say we are all busy with hearings today. This is the first time in 8 years in the Senate that my staff has actually made me a chart, "R.W. Hearing Locations for April 20" to help me get from one hearing to the other in the most efficient manner.

[Laughter.]

Senator WICKER. So needless to say, I will not be able to stay here for the entire hearing today, but I have a chart to get me around.

I am pleased to introduce Mark McAndrews. Our witness sheet says that he is Port Director of the Port of Pascagoula, Pascagoula, Mississippi, and that he has been for the past 15 years.

But I want you to also know that he has done such a good job, and he is held in such high esteem among his peers, that earlier this month he was elected Chairman of the Board for the American Association of Port Authorities, AAPA. With more than 3 decades of maritime service, Mark McAndrews is an excellent choice for this role.

He is a graduate of the Merchant Marine Academy. He is a U.S. Coast Guard-licensed Merchant Marine officer and a retired Captain from the Navy Reserve.

Mark's success at port administration has benefited from his work in both the public and private sector. This will no doubt be true for his AAPA leadership as he works with members to address port challenges.



Mark is also active in a number of professional organizations. He serves as Chairman of the Gulfport Association of the Americas, Chairman of the AAPA Gulf Caucus. He is a Member of the Executive Committee of the Mississippi Coast Foreign Trade Zone, and is on the Board of Directors for the Mississippi Water Resources Association and the Mississippi Intermodal Council.

So, Madam Chair, thank you very much for allowing me to recognize and introduce a friend and Mississippian who makes us all proud, Mark McAndrews.

Senator FISCHER. Thank you very much, Senator Wicker.

With that, Mr. McAndrews, welcome. If you would like to give us your opening comments?

**STATEMENT OF MARK McANDREWS, PORT DIRECTOR,  
PORT OF PASCAGOULA, AND CHAIRMAN ELECT,  
AMERICAN ASSOCIATION OF PORT AUTHORITIES (AAPA)**

Mr. McANDREWS. Thank you very much. Chairman Fischer, Ranking Member Booker, members of the Committee, thank you for the opportunity to speak at this hearing.

As the Senator stated, I am Mark McAndrews. I am the Port Director in Pascagoula, Mississippi, and I am the Chairman Elect of the American Association of Port Authorities representing our U.S. ports today.

U.S. seaports represent a vital economic engine of our national economy, responsible for over 23 million U.S. jobs and \$321 billion in Federal, State, and local tax revenue. U.S. deepwater ports generate \$4.6 trillion in total economic activity, 26 percent of the Nation's economy.

"Port congestion" is a term that we have all become familiar with. However, it is important to remember that it means different things to different stakeholders. Discussions regarding congestion have been very worthwhile, but the reality is that the industry is changing rapidly.

At the same time, trade demands and population growth in our country are also changing. In the middle of these massive changes are ports and their governing authorities.

Business decisions made by the shipping industry have directly impacted how ports operate and are having a rippling effect throughout our freight network. Ships using our ports are now bigger and getting even bigger still. Ships are as long as a skyscraper and as wide as a 10-lane freeway.

In addition to larger vessels, the four largest ocean carrier alliances move approximately 90 percent of ocean freight shipping cargo, which puts multiple company shipments on a single vessel and can include up to seven terminals when a vessel docks.

Our ports are facilitators in the supply chain. Larger ships and these mega-alliances have a cascading effect when they arrive in our ports, such as needing larger cranes to offload containers, more chassis to move the containers out, and adjusting gate times to address the changing workload.

Last year, container traffic at U.S. ports hit a record high of nearly 47.7 million containers, a 14 percent increase over the last 10 years. However, containers are only one aspect of a bigger picture. Millions of tons of noncontainerized cargo are shipped annu-

ally through the U.S. ports, commodities such as steel, coal, iron ore, cement, grain, soybeans, fertilizers, the raw and semi-processed inputs so vital to the functioning and health of our national economy.

Energy commodities such as petroleum and coal are the dominant commodities by weight, accounting for 54.2 percent of the 1.4 billion tons of foreign trade cargo handled at U.S. ports.

Additionally, Ranking Member Nelson's Florida seaports have seen historic growth in cruise passengers, with almost a 20 percent increase in 6 years, reaching more than 15 million passengers, including the world's top three ports.

Rising freight volumes on all coasts mean we must upgrade our waterside and landside infrastructure. Some investments are already occurring.

Earlier this month, AAPA released its port plan infrastructure investment survey, which revealed ports and private sector partners will invest \$155 billion over the next 5 years. This is over three times the amount from the \$49 billion reported in its 2011 survey.

Waterside funding and policy, while not under this committee's jurisdiction, is likewise important and should be approached systematically with landside funding and policy issues. A great start has been made with the FAST Act, which provided \$11 billion of dedicated funding to freight, and we thank Senator Cantwell and this committee for their work on multimodal funding.

However, of the \$11 billion, only \$500 million is multimodal-eligible, and up to 10 percent of the freight formula funding. To put multimodal needs into perspective, last year's AAPA state of freight survey identified \$29 billion in port-supported projects and 46 multimodal projects. Long-term multimodal funding is critical, and we encourage you to start looking at funding solutions.

AAPA has endorsed the concept of a 1 percent waybill fee as an equitable approach to provide immediate and long-term funding for multimodal freight infrastructure challenges.

In order for our ports to perform efficiently, Customs and Border Protection must be adequately funded and staffed. In 2015, the last time CBP was funded to hire additional staff, only 10 of 2,000 authorized staff were assigned to seaports. While this may sound like an appropriations or homeland security issue, it is ultimately a supply chain issue.

AAPA has been supportive of both U.S. DOT's TIGER program and MARAD's Strong Ports program, which is helping ports plan, finance, and coordinate projects, including shortsea shipping and the marine highway.

The Build America Transportation Investment Center, or BATIC, which was codified in the FAST Act, can be a tool for ports to explore ways to access private capital and public-private partnerships.

Additionally, cybersecurity continues to be one of our top issues. Within our membership, 97 percent of our ports meet regularly with the Coast Guard on cybersecurity, and 67 percent of our ports have formed a cybersecurity working group in their area maritime security committee.

I appreciate this opportunity to appear before you, and I would be happy to answer any questions.

[The prepared statement of Mr. McAndrews follows:]

PREPARED STATEMENT OF MARK MCANDREWS, PORT DIRECTOR, PORT OF PASCAGOULA AND CHAIRMAN ELECT, AMERICAN ASSOCIATION OF PORT AUTHORITIES (AAPA)

Chairman Fischer and Ranking Member Booker and members of the Committee, thank you for holding this important hearing. I am Mark McAndrews, the Port Director of the Port of Pascagoula and also the Chairman Elect of the American Association of Port Authorities (AAPA).

AAPA is the unified and collective voice of the seaport industry in the Americas. AAPA empowers port authorities, maritime industry partners and service providers to serve their global customers and create economic and social value for their communities. Our activities, resources and partnerships connect, inform and unify seaport leaders and maritime professionals in all segments of the industry around the western hemisphere. This testimony is on behalf of our U.S. members.

U.S. Seaports represent a vital economic engine of our national economy; responsible for over 23 million U.S. jobs and \$321 billion in federal, state and local tax revenue. U.S. deep-water ports also generate \$4.6 trillion in total economic activity, or 26 percent of the Nation's economy.

First, I'd like to talk about some of the national trends through the lens of AAPA. Port congestion is a term that we have all become familiar with, however it means different things to different stakeholders, Congress, the Administration and most importantly to the communities in which ports are a part of.

Last year, the Federal Maritime Commission (FMC), under the leadership of Chairman Cordero, led a series of diverse regional roundtables on port congestion, which started the national conversation. Recently, the Administration, led by the Commerce, Labor and Transportation Departments have sought to replicate those regional roundtables in Baltimore last month and in Los Angeles last week. This Committee, last year, also attempted to examine port congestion.

These discussions have been worthwhile, but the reality is that the industry is changing rapidly. At the same time, the demands and population growth in our country are also changing—and in the middle of these massive changes are port authorities.

Business decisions made by the shipping industry, have directly impacted how ports operate and are having a rippling effect throughout our freight network.

Ships using our ports are now bigger—and getting bigger. Now ships are as long as a skyscraper and as wide as a 10-lane freeway.

In addition to larger vessels, the four largest ocean alliances move approximately 90 percent of ocean freight shipping cargo, which puts multiple company shipments on a single vessel and can include up to seven terminals when a vessel docks.

And if you are following the industry news, the makeup of these mega alliances could further change by the end of this week—this is how fast our industry is changing.

Our ports are facilitators of the supply chain. Larger ships and these mega-alliances have a cascading effect when they arrive at our ports, such as needing larger cranes to off load containers, more chassis to move the containers out and adjusting gate times to address the changing work load.

Last year, container traffic at U.S. ports hit a record high of nearly 47.7 million containers, a 14 percent increase over the last ten years.

However, containers are only one important aspect of a much bigger picture.

Millions of tons of non-containerized cargo are shipped annually through U.S. ports—commodities such as steel, coal, iron ore, cement, grain, soybeans, fertilizers—the raw and semi-processed inputs so vital to the functioning and health of our national economy.

Energy commodities such as petroleum and coal are the dominate commodities by weight, accounting for 54.2 percent in 2014 of the 1.4 billion short tons of foreign trade cargo handled at U.S. ports.

Additionally, in Ranking Member Nelson's state, Florida seaports are home to the three top cruise ports in the world and have seen historic growth in cruise passengers with almost a 20 percent increase in six years—reaching more than 15 million passengers.

But rising freight volumes on all coasts and the Great Lakes, means we must upgrade our waterside and landside infrastructure in order to accommodate these larger ships and freight surges.

Some of the investments are already occurring. Earlier this month, AAPA released its Port Planned Infrastructure Investment Survey, which revealed ports and private sector partners will invest \$155 billion over the next five years. This is over triple the amount from the \$49 billion reported in the 2011 survey.

To put this into a broader perspective; over the next five years, Federal investments in the freight network for *BOTH* *landside* and *waterside* could be only \$24.825 billion.

And this is a best case scenario.

While waterside funding and policy is not under this Committee's jurisdiction, it cannot be ignored. We must take a freight system approach.

A great start has been made with the FAST Act, which provided \$11 billion of dedicated funding to freight.

We thank Senator Cantwell and this committee for their work on multimodal funding. However, of the \$11 billion, only \$500 million is multimodal eligible—and up to 10 percent of the freight formula funding.

To put multimodal needs into perspective, last year's AAPA State of Freight survey, identified \$29 billion in port supported projects and 46 multimodal projects. We hope to see a healthy portion of the Fastlane grants and 25 percent of the TIGER grants be devoted to maritime related projects.

Additionally, many of these port projects have an on-dock rail component. 73 percent of our ports have on dock rail, but of these systems are out-of-date and need to be significantly enhanced and reinforced, as well as integrated with new technology to accommodate rising shipping volumes.

Long term multimodal funding is critical and we encourage you to start looking at solutions. AAPA has endorsed the concept of a 1 percent waybill fee as an equitable approach to provide immediate and long-term funding for multimodal freight infrastructure challenges. This was based on legislation, H.R. 1308 *Economy in Motion: The National Multimodal and Sustainable Freight Infrastructure Act*, introduced by Representatives Alan Lowenthal (D-CA). The FAST Act provides a great start to fund freight, but we need a more sustainable funding source to build out our multimodal freight network.

On the operational front, the Federal Government has a vital role to play with freight flow performance.

In order for our ports to perform efficiently CBP must be adequately funded and staffed. In 2015, the last time CBP was funded to hire additional staff only 10 of 2000 staff were assigned to seaports.

This may sound like an appropriations or Homeland Security issue, but it is a supply chain problem.

All of these issues and the gap in Federal investment needs collectively contribute to port congestion. It is not a single issue and there is not a single solution.

As the Port Director of Pascagoula I see how these trends make an impact on people who live in my region. Our two harbors include a combination of public and private terminals handling in excess of 32 million tons of cargo through the channel annually. The Port is the largest seaport in Mississippi, and ranks nationally in the top 20 ports in foreign cargo volume.

Ports, such as port Pascagoula, are adjusting to the surge in energy commodities. Even before Congress lifted the ban on crude oil exports, Gulf Coast ports and their private sector partners were planning massive investments in energy infrastructure.

Some examples of the type of investments being made at my port and in the Gulf region are Chevron Pascagoula Refinery's \$1.4 Billion Pascagoula Base oil plant constructed in 2014 that produces 25,000 barrels per day of premium base oils.

Also, the Gulf LNG Energy, LLC, has as filed an application (with FERC) to add liquefaction and export capabilities to the Gulf LNG terminal in the Port of Pascagoula which is an \$8 Billion investment.

Finally, at the Port of Pascagoula Public Terminals we, the port and our private sector partners are developing a \$30 Million biomass export facility.

AAPA has been supportive of both USDOT's TIGER program and MARAD's Strong Ports program which is helping ports plan, finance and coordinate projects, including short sea shipping and the marine highway.

MARAD's focus on infrastructure started with the TIGER grants. Since its inception in 2009, TIGER maritime projects have received over \$500 million in Federal funding while leveraging \$700 million in additional funding. The TIGER program has awarded \$1.1 billion in grant funding to 66 freight projects across the country. Other TIGER funded freight projects have also supported and enhanced the freight network that carries rail, truck and maritime cargo.

My port received a rail TIGER grant which results in the relocation of the Mississippi Export Rail Line, which winds through the cities of Moss Point and

Pascagoula, to a more efficient rail route into the port. The project will also net closure of 16 rail crossings through the two cities.

But the TIGER program has been more than just a discretionary program to the port industry. It is the first program that ports are eligible and is multimodal. It also brought ports into the surface transportation fold, which meant that whether you received a TIGER grant or not you were encouraged to coordinate a project with your state and local MPO before submitting the project. It meant that ports were becoming part of the planning process and freight was beginning to get a seat at the table.

Also, the Build America Transportation Investment Center or BATIC which was codified in the FAST Act can be a tool for ports to explore ways to access private capital in public private partnership.

Finally, cybersecurity continues to be one of the top issues. Within our membership, 97 percent of our ports meet regularly with the Coast Guard on cybersecurity and 67 percent of our ports have formed a cyber security working groups with their Area Maritime Security Committee.

I appreciate this opportunity to appear before you and I am happy to answer any questions.

Senator FISCHER. Thank you.

Next, we have Mr. Perry Bourne, Director of International Transportation and Rail Operations of Tyson Fresh Meats.

Thank you, sir, for being here today. If you would like to give your opening statement?

**STATEMENT OF PERRY M. BOURNE, DIRECTOR,  
INTERNATIONAL TRANSPORTATION AND RAIL OPERATIONS,  
TYSON FOODS, INC. ON BEHALF OF THE AGRICULTURE  
TRANSPORTATION COALITION**

Mr. BOURNE. Good morning, Chairman Thune and Chairwoman Fischer. Thank you for this opportunity to share my thoughts this morning with regard to the amendment of SOLAS regulations that will become effective shortly, July 1, 2016.

I am here representing the Agriculture Transportation Coalition and all of its members. My name is Perry Bourne. I am the Director of International Transportation and Rail Operations for Tyson Foods. Tyson is a major U.S. exporter of meat protein worldwide with 110,000 team members operating in 26 states and 11 countries.

Today, I want to address the SOLAS, Safety of Life at Sea, amended regulation and its impact on U.S. exporters. This regulation was instituted by the International Maritime Organization with the intent to improve safety and life at sea.

Carriers are of the opinion that some shippers worldwide are overloading containers and underdeclaring loads that they are putting on ships. The Coast Guard denies this and is saying that it is not a problem for the U.S. outbound trade.

The biggest concern with the new SOLAS is it shifts weight notification of the combined container assets and the gross cargo weight solely to the exporter to create a verified gross mass or what is referred to as VGM. Although the Coast Guard tells exporters we have been and still are compliant with the new SOLAS regulations, ocean carriers take a more rigid approach.

If implemented under a strict interpretation, the amended SOLAS regs can and will cause major congestion problems at the port.

Here's the problem. Despite the Coast Guard's position that U.S. exporters are compliant with the new SOLAS regulation, there are

only two pathways to compliance identified by OCEMA, which stands for the Ocean Carriers Equipment group.

Both are problematic. One, weighing all containers is impossible with current port infrastructure. And two, requiring exporters to be responsible for empty container weights under strict timelines doesn't reflect current port realities.

Let me explain why. Exporters know and have provided the gross weight of their cargo for years. In addition, the SOLAS amendment calls for exporters to identify the empty weight of the carrier's container asset, which we don't own or operate or lease. This weight has previously always been provided by the ocean carrier under the original SOLAS regulation in 1994, as they already have that information in their data systems.

The real issue is twofold, timing of when the empty container weight information is made available by the ocean container carrier, and deadlines when ocean carriers and terminals require this weight information in order to have the cargo loaded on the vessel that it was booked for.

If terminals haven't received weight details, many terminals on the U.S. East Coast and West Coast have stated they will turn truckers away, preventing delivery of the cargo and creating bottlenecks at the terminal gates.

I want to give you an example of chilled meat shipments that we make from numerous plants, including Lexington, Nebraska, and Dakota City, Nebraska. This cargo is all transload. On the chilled, it has a shelf life sensitivity, ships weekly from states like Nebraska and Kansas Wednesday, Thursday, and Friday each week for delivery Sunday and Monday at the U.S. West Coast ports. Exporters are trying to get this just-in-time cargo delivered to vessels which have cutoffs Monday at 4 p.m. for sailings Tuesday.

According to the OCEMA carrier group, who has established the operating rules best practices, exporters must deliver the combined gross weight and empty container weight by noon the day of cutoff. This information in most cases is known late in the process.

Every week, we have 10 percent-plus of our chilled cargo that requires late gates on Tuesday morning. As a result, this cargo would now be rolled to the next week's ships under the "no VGM, no load" policy.

On chilled, if the exporter misses the required sailings, the customers won't accept it the following week on the next sailing, again, because of shelf life issues. This would cause lost sales of highly valued meat that would either have to be airfreighted to destination or freeze the cargo and sell it as frozen at much reduced values.

The bottom line is the customer doesn't get what they want, and they are forced to replace the missing chilled cargo on the open market at a loss to them.

As you can see, this amended SOLAS process adds no value and costs exporters more to deliver. Thus, the exporters experience lost sales, as we did during the 2014–2015 port congestion issue that was mentioned by Senator Fischer earlier.

Commodity products like the various AgTC members sell and distribute overseas can all be sourced from other countries—that is

a very critical point—like Australia, Brazil, the EU, and other countries.

I have a couple solutions that I would recommend that the Committee look at and consider seriously.

We need carriers to sit down and work with exporters to develop a deliverable solution and the Committee's support for that dialogue. Barring no success with this effort, we would need this committee to request the Coast Guard to go back to the IMO and clarify there are multiple ways to satisfy the SOLAS regulation, as we have been repeatedly told by the U.S. Coast Guard.

Thank you.

[The prepared statement of Mr. Bourne follows:]

PREPARED STATEMENT OF PERRY M. BOURNE, DIRECTOR, INTERNATIONAL TRANSPORTATION AND RAIL OPERATIONS, TYSON FOODS, INC. ON BEHALF OF THE AGRICULTURE TRANSPORTATION COALITION

#### **Background on the Agriculture Transportation Coalition (Ag-TC)**

The AgTC is the voice for the U.S. exporter—from small farmers to the largest agriculture merchants across the country. The AgTC's primary objective is assuring transportation service that allows U.S. agricultural exporters to be competitive in the international market.

#### **Background on Tyson Foods, Inc.**

Tyson Foods, Inc. is one of the world's largest food companies and a major producer of protein for the U.S. and global meat markets with sales in FY 2015 exceeding \$40 Billion. We produce poultry, beef, pork and value-added branded protein items for retail and foodservice markets within the U.S. and approximately 130 countries. We have 45 poultry plants, as well as 12 beef, nine pork, one turkey and 38 prepared food facilities. Tyson Foods has operations or sales offices in 26 states as well as four international facilities in China and India. Tyson was the second largest U.S. export reefer commodity protein shipper in 2015, with shipments in excess of 40,600 TEU's of reefer and another 11,400 TEU's of animal hides, skins and leather.

#### **Issues impacting the U.S Maritime Industry**

My name is Perry Bourne and I am the Director of International Transportation for Tyson Foods, Inc., one of the Nation's largest food exporters. I am also pleased to be testifying on behalf of the Agriculture Transportation Coalition (Ag-TC), which represents a wide range of U.S. agricultural exporters. My testimony today will cover three issues regarding maritime shipping that AgTC and Tyson Foods believes are most important to U.S. exporters at the present time:

1. Safety Of Life At Sea (SOLAS) amended shipper weight certification
2. Continued congestion at our U.S. West Coast Ports
3. Mega-Carrier Alliances

#### ***SOLAS Amended Shipper Weight Certification***

By far the most urgent issue facing shippers today is the impending SOLAS amendment. As this Committee is aware, the International Maritime Organization (IMO), the maritime arm of the United Nations, has been involved for decades with issues related to the safety of vessels and personnel while at sea. A consistent focus for the IMO has been ensuring the accurate reporting by shippers of their loaded cargo weight. This led to the original SOLAS regulation in 1994, which required shippers to provide accurate gross cargo mass on all containers. This process of reporting weights has been acceptable for all U.S. shippers, and shippers worldwide, for over two decades.

In 2014, the IMO updated the SOLAS convention with a new amendment that is scheduled to take effect on July 1, 2016. Under the new amendment, shippers will not only be responsible for reporting the normal gross cargo weight (what shippers like Tyson Foods add to the containers owned by the carriers), but also for certifying the "VGM" or verified gross mass of each container (which includes the weight of the specific container provided by a carrier) prior to the cargo being loaded on the ship. Plus, a designated member of the shipper's staff must provide a written certification as to the validity of the reported weight.

As you might expect, shippers like Tyson Foods and other members of the AgTC have serious concerns with being responsible for verifying the weight of shipping containers that we do not own, lease or operate. Fortunately, the U.S. Coast Guard, which has responsibility for ensuring U.S. compliance with SOLAS, has made clear on a number of occasions, including in testimony last week before the House Committee on Transportation and Infrastructure, that there are several ways for the “VGM” weight to be reported.

It is our understanding that among the options the Coast Guard deems compliant is the “Rational Approach” that has been proposed by AgTC. Put simply, this would call for the shippers to continue providing the gross cargo mass added to a carrier’s container and the carrier would provide the weight of their owned or leased container asset. This would represent the most efficient, and most accurate, method of determining the total “VGM” weight. The carriers know their assets better than anyone and it is my understanding that many carriers already have this data in their system.

The goal of the new SOLAS amendment is to promote more accurate VGM reporting and increase safety, a goal all shippers share. It is important to note that our current weight reporting is already held to strict requirements for accuracy under The Intermodal Safety Act and timely filing of export data to Customs and Border Protection. We adhere to the requirements developed by the SOLAS Convention of 1994. We are not aware of contentions that U.S. shippers have been responsible for any problems for the ocean carriers that would compromise safety at sea. With this record of compliance and safety in mind, we firmly believe the best way to assure safety in this area is to have the parties report on the assets under their control.

Unfortunately, the ocean carriers, as represented by the World Shipping Council (WSC) and The Ocean Carrier Equipment Management Association (OCEMA) are insisting that the “Rational Approach” proposed by the AgTC, and acknowledged by the Coast Guard as compliant with SOLAS, is not an acceptable method of determining the “VGM” weight. They contend that the shipper must be responsible for verifying the weight of the containers owned or leased by their own members. I will not speculate on why the carriers have adopted such an inflexible position. But we can certainly predict the possible impacts at the ports if the carriers do not change their position and agree to a reasonable resolution of this issue.

To illustrate the potential impacts, I will talk specifically about my company. Today, approximately 75–85 percent of Tyson Foods’ protein products bound for export markets are shipped to the U.S. ports by domestic rail or truck. These products are then trans-loaded from the domestic conveyance to the ocean carrier’s container. Tyson’s plants and freezer facilities are located anywhere between 1100 and 2200 miles from the U.S. West Coast ports. When we book an export load for shipping, although the ocean carrier has the weight information of all their container assets in its database, the actual weight of the specific container assigned to Tyson’s booking is not known at the time of loading.

As a logistics professional, I appreciate and understand this fact. However, if the rules are going to be changed that require shippers to find a way of obtaining the specific weight information on a container, we will have to develop some method of obtaining this information in a timely manner from the carrier or from the trans-loader. The alternative, as I will discuss more below, is trying to obtain the actual container weight at the port, which risks missed sailings. In my view, it makes no sense to force the shipper to try and obtain information for a carrier that the carrier *already* has in its database. This builds unnecessary inefficiency into a system with existing challenges.

The cost of this inefficiency, and even more delays at the ports, is not theoretical. It will mean lost revenue for Tyson Foods and other shippers, particularly those of us who ship time sensitive products. To be specific, my company moves between 70–80 loads of chilled meat on a weekly basis. These loads are shipped Wednesday through Friday from our facilities and arrive by truck at the West Coast ports on Sunday and Monday. The cut-offs for delivery to the ocean carriers are Monday for a Tuesday sailing. Under the SOLAS “Best Practices” put forward by the ocean carriers, it states that vessels cutting off each night for a next day sailing must have the “VGM” weight reported by noon on that day. The reality of the export business is that each week shippers like Tyson are up against the carrier deadlines due to various transit problems and often require late gates from the carriers to deliver cargo to the ship early on Tuesday mornings, while the ship is still loading.

However, if the SOLAS approach favored by the carriers is adopted, and Tyson Foods is unable to obtain the specific container weight for the “VGM” until the time of trans-loading, under the carriers’ own rules any cargo trans-loaded late would have to be delayed for the following week’s sailing and we would be required to air freight the cargo or forced to convert a chilled fresh product to a frozen product. All



of these alternatives mean lost sales, and potential lost market share, in valuable export markets such as Asia. U.S. agricultural exporters are comprised of some of our most successful and globally competitive companies and commodity sectors. However, we cannot continue to grow our exports if we are faced with additional delays and increased costs at our ports.

Fortunately, this does not need to be the case. The AgTC has put forward a common sense solution to comply with the new SOLAS amendment and the Coast Guard supports our position. We simply need the ocean carriers to sit down with us and agree to a sensible arrangement so that our ports run as efficiently and safely as possible. We need to be talking about ways to grow our exports, to the benefit of shippers, the ports and its workers, as well as the ocean carriers. We ask for this Committee's support in insisting on a solution to SOLAS that is both compliant and supportive of U.S. export growth.

#### *Continued Congestion at our U.S. West Coast Ports*

Although the situation is much improved from last year's severe problems, port congestion continues at some of the U.S. West Coast terminals. For a variety of reasons, we are still experiencing delays on a regular basis a full year after the resolution of the contract disputes. As a shipper, it is not my responsibility to resolve the problems within the ports caused by infrastructure, trucking or labor issues. I have food products to move, and as we have discussed, some of it is very time sensitive. If we don't deliver what our customers want on time, we develop a reputation, both as suppliers and as a source country, of being unreliable. Our customers can and do buy similar protein products from Australia, Brazil and the European Union countries. The United States is not the only game in town.

The issues that lead to consistent problems and congestion at the ports must be examined and addressed from a big-picture perspective. There needs to be accountability across the board from carriers, terminals, labor, port authorities and others in the overall supply chain to improve efficiencies and solve problems. I applaud the efforts of FMC Commissioner Rebecca Dye for her initiative to bring together industry working groups of stakeholders in an effort to identify the key drivers causing the persistent delays at the U.S. ports and to propose meaningful solutions that will make our ports the most productive and efficient in the world. I am also encouraged by the Congressional proposals to establish meaningful efficiency metrics on port performance and the handling of cargo. We need data and metrics to identify key issues and the systemic problems that must be addressed. Again, our goal should be the best port infrastructure in the world. I urge this Committee to focus on ways that we can better understand the problems at our ports and help us with long-term solutions.

#### *Mega-Carrier Alliances*

From our perspective, many of the issues that have beset the U.S. West Coast ports in particular have arisen from the consolidation of carriers into these foreign flagged mega-alliances. As an example, for a given Tyson Foods shipment from the Oakland's port to Japan we may have booked our cargo with Carrier A, but as part of an alliance that carrier will not be providing the actual vessel the alliance will use for that week's sailing. In fact, it is another member of the alliance, Carrier B, which will be providing the vessel located at a different terminal. Regardless, Tyson Foods must still have a port trucker retrieve the empty containers from Carrier A's terminal, because we still must use the containers of the carrier we booked with, then those containers must rendezvous with our cargo to be trans-loaded at the port. Finally, our trans-loaded cargo has to be transported over to Carrier B's terminal, where the actual ship is located.

Now, think about this process being repeated over and over at a port in a given day for much of the cargo that is coming in. Suddenly you have much more congestion at the port than in the past. Increased congestion at ports, which is already a recurring problem, can mean delays, added costs and even missed sailings. This hampers U.S. export growth. We would like to see more thorough review of these foreign carrier alliances by the FMC to ensure that their actions do not result in a logistics network within the ports that adds more truck trips and congestion to an already overloaded port infrastructure. From our perspective, this is exactly what is happening. In recent years, we have already seen fewer ships and sailings with the advent of supersized vessels of up to 20,000 TEU's and reduced infrastructure as the carriers have eliminated their own off chassis operations. Now the addition of the alliances and shared sailings has added even more to the shore-side costs of shippers trying to deliver cargo to the ships.

I urge this Committee to increase its oversight of the impacts of carrier alliances on U.S. exporters and to encourage the FMC to undertake a full review of these alliance activities.

#### **Conclusion**

As my testimony has made clear, we have significant challenges facing us that can further disrupt U.S. exports and hurt the American economy. However, this is also a time of great opportunity. We are adding millions of customers for U.S. agriculture and food products around the world each year and we are well positioned to serve these customers if our export infrastructure is up to the job. I look forward to working with this Committee and all stakeholders to reach solutions so that we can serve our global customers. I thank the Committee for this opportunity and welcome any questions.

Senator FISCHER. Thank you very much.

Next, we have Mr. Michael Roberts, Senior Vice President and General Counsel of Crowley Maritime Corporation.

Welcome, sir.

#### **STATEMENT OF MICHAEL G. ROBERTS, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, CROWLEY MARITIME CORPORATION**

Mr. ROBERTS. Thank you, Chairwoman Fischer, Senator Booker, members of the Committee. Thank you for convening this hearing on this industry. We appreciate it, and thank you for inviting me to testify.

The American maritime industry is a substantial and vital component of the American and global economy. It is very large and diverse. In domestic shipping alone, U.S. shipyards, U.S. vessels, and mariners contribute \$100 billion in economic activity and a half million jobs.

I would like to discuss this morning three issues that are included in my written statement: Puerto Rico, the domestic petroleum shipping industry, and U.S. participation in international shipping, if I have time.

First, Puerto Rico. My company has participated in the Puerto Rico trade for 60 years. I have personally been involved for 25 years.

It is a spectacularly beautiful part of the United States. It has jaw-dropping scenery, amazing restaurants, and a wonderful culture.

It is also an economic train wreck after 10 years of a recession. As many as 5,000 Puerto Ricans per month are leaving the island as a result by one-way plane tickets and relocating to the mainland.

One of the indicators we see in our business is the number of used cars being shipped northbound from Puerto Rico to the mainland. In years past, we would carry about an average of two automobiles a day, usually for retirees and for students coming to the mainland for study.

In the last couple years, we have handled on average about 22 cars per day. These are typically families with children and their luggage dropping the car off at the terminal in San Juan, taking a taxi to the airport, and leaving the island for good. It can be a heart-wrenching scene and a sad commentary on the position of the island, as it is today.

The Puerto Rican government did what governments do. They borrowed money to pay the bills in the hopes that something would change and hard decisions could be avoided. Each year, the bills got larger to pay back the debt. And as the needs of the Puerto Ricans grew, we have reached a breaking point.

What is striking here, and what makes congressional action on Puerto Rico essential, is that unlike any other part of the United States, there is not a mechanism in place to work out Puerto Rico's debt in an orderly manner. We support some kind of restructuring mechanism as well as a board to help reestablish financial accountability and other measures that are under consideration.

A handful of House Members have advocated a Jones Act exemption in connection with this legislation, something we vigorously oppose for reasons outlined in my written statement. Such a measure would not help Puerto Rico and, in fact, do serious harm to Puerto Rico, and it would absolutely destroy commercial shipbuilding in this country. It would cut the legs out from under two companies, Crowley being one, that have shown leadership in investing in this market, building two vessels in Pascagoula for that market, LNG-powered vessels.

It bears emphasizing that these are unique ships, prototypes for the world as a transition to LNG power.

Puerto Rico faces serious problems and needs serious solutions, not some token provision that is ideologically driven and has nothing to do with the situation on the ground in Puerto Rico.

The second issue is the domestic tanker industry. The shale oil boom created a shipbuilding renaissance in America with dozens of new vessels delivered or on order, nearly all of them intended to handle crude oil. This is great news. For the first time in my career going back to 1984, the maritime workforce has seen a sustained expansion both in shipbuilding and in the American mariners needed to operate the vessel.

It has created some challenges in finding qualified people. But frankly, those are nice problems to have.

Two relatively recent events have moderated or reversed this trend. One is the drop in crude oil prices, which has brought further exploration and production work to a crawl. A very large segment of the American maritime industry that provides services in support of offshore development has been in a tailspin, as a result. While the government shouldn't try to control the price of oil, regulations should promote responsible development of offshore resources.

Second is the change in law to allow crude oil exports. As noted, these vessels have been ordered and contracts have been made under a legal framework that did not allow crude oil exports. We don't know what will happen as a result of this change.

There are reasons to believe the impacts may be manageable, but there is also the possibility of very serious disruption in trading patterns. It is almost certain that any change in the markets would not be favorable to U.S. flag operations. So we are keeping a very close eye on this, and we will keep you informed as it moves forward.

Thank you again for your interest in our industry, and I look forward to your questions.

[The prepared statement of Mr. Roberts follows:]

PREPARED STATEMENT OF MICHAEL G. ROBERTS, SENIOR VICE PRESIDENT AND  
GENERAL COUNSEL, CROWLEY MARITIME CORP.

Chairwoman Fischer, Ranking Member Booker and Members of the Committee:

Thank you for the opportunity to appear today to offer the perspective of American shipping companies on the state of the U.S. maritime industry. Attached to this Statement is a summary of Crowley Maritime Corp. and its current operations, as well as a brief biography. Crowley is one of the leading American maritime companies, operating more than 300 vessels in diversified services. It has about 5,300 employees, including 2,100 U.S. merchant mariners. These mariners work on U.S. flag vessels domestically and around the world. They live in 46 of the 50 states (including one in Nebraska and 31 in New Jersey), Puerto Rico, Guam, and the U.S. Virgin Islands. These are the men and women America relies upon to operate the vessels that supply our military personnel overseas. Crowley also leads in deploying new American-made vessels, with about \$2 billion invested in recent years in modern tank vessels, container/ro-ro ships, high-powered tugs and heavy deck barges.

This Statement provides updates on selected issues involving the American domestic and international maritime industry, and a brief review of key policy issues. It focuses on segments of the industry in which Crowley is substantially involved, including domestic tanker and liner businesses (Crowley is a market leader), international container shipping (strong regional carrier), and offshore development (substantial operations). It does not address other important segments in which we are not involved (*e.g.*, passenger, dry bulk, international tanker, etc.).

A brief contextual note—domestic and international maritime markets are discussed separately because very different legal and regulatory systems govern domestic and international shipping. This is important in understanding why those markets may have different economic conditions, and in considering policy choices in this area. “Normal” regulatory principles apply to domestic shipping in the sense that those who operate in American domestic trades must obey American laws. Ships must be registered under the U.S. flag, which means that in a legal sense, the vessels are considered a part of American sovereign territory. The ship owner and all involved must comply not only with rules that apply particularly to the maritime industry, but also to rules applicable to American businesses generally. This includes immigration (officers and crew of a U.S. flag ship must be American citizens), employment, environmental, safety, tax, and other laws.

Because ships in international trade do not operate within any single national jurisdiction, ship owners can simply pick the jurisdictional home of every element of their business, including most importantly, where their ships are registered.<sup>1</sup> This is not permitted in any domestic service business. For example, a restaurant or factory owner cannot plant the flag of another country at his/her facility in Lincoln and declare it to be no longer part of America, so that they can reduce costs, replace American workers with foreign workers, eliminate U.S. tax liability, etc. Because of the Jones Act and other “cabotage” laws in the U.S. and other countries, domestic shipping, aviation, and other service industries are governed by “normal” regulatory principles, *i.e.*, the laws of the country in which they operate.

#### **Domestic Shipping Markets**

America has a large and diverse fleet of vessels serving its domestic commerce—about 40,000 vessels, providing employment to nearly 500,000 Americans, and about \$100 billion in economic activity. This includes some 5,000 towing vessels, and 27,000 barges in river and coastal trades; thousands of vessels supporting offshore development; about one hundred ocean going self-propelled vessels, and dozens of large tug-barge units (ATBs); and other specialty vessels. The contribution of the domestic maritime industry to national and homeland security is well-recognized, and includes providing manpower to support sealift operations; helping to sustain America’s shipbuilding industrial base; and helping secure America’s river system and coastal waterways from possible terrorist attack.<sup>2</sup>

<sup>1</sup> Ship owners usually choose jurisdictions that minimize tax and regulatory burdens. According to a 2010 UN report, the top five registries for international shipping are: Panama, Liberia, Marshall Islands, Hong Kong, and Greece. These jurisdictions, which account for .4 percent of world population, register more than 50 percent of the world’s tonnage. U.S. flag vessels (including domestic and international) accounted for 1 percent of world tonnage, while U.S. population accounts for about 4.5 percent of the world total.

<sup>2</sup> See, *e.g.*, Dr. Daniel Goure, Lexington Institute, *Venerable Jones Act Provides an Important Barrier to Terrorist Infiltration of the Homeland*, March 24, 2016; Gen. Darren McDew, Com-

### Domestic Tanker Market

The domestic tank vessel industry has changed dramatically over the past several years. It has historically been a relatively discrete market, consisting primarily of moving crude oil from Alaska to U.S. West Coast refineries, and moving gasoline, jet fuel, heating oil and other refined products from refineries to markets around the coast. Vessels in these trades have been replaced over time due to the requirements of the Oil Pollution Act of 1990, which phased out single-hull vessels on a schedule that ended in 2015. Vessel owners deploy a variety of vessel types in these trades, including small, medium and large ATBs and self-propelled tankers.

Dramatic growth in the domestic petroleum industry over the past few years has led to corresponding growth in the domestic petroleum shipping industry, with an incremental increase in the fleet of 20–25 vessels including those recently delivered and those on order. Five years ago, less than 10 percent of the fleet was dedicated to moving crude oil compared to about one-third of the fleet today. American shipbuilding order books are full well into 2018. One of the challenges in gearing up this fleet has been in finding highly qualified officers and crew, particularly engineers, to man the vessels. This may be ameliorated to some extent by the reduced offshore development activity, with corresponding lay-offs of hundreds of mariners. It is not clear, however, the extent to which these mariners have skills and certifications coming out of their work on tugs and supply vessels that will readily transfer to operating petroleum tankers.

The industry is also actively engaged in the “Military 2 Maritime” veteran recruiting effort. The basic concept is to find opportunities in the American commercial maritime industry for military service veterans who have maritime experience in their service background. Such veterans can be ideal candidates to fill open positions in that they not only have technical and licensing qualifications, but also are acclimated to the culture and environment of maritime operations. Many such veterans have found, however, that obtaining the necessary Coast Guard licensing has been more difficult than expected. This is not due to a lack of skills or practical training in many cases, but because credit for sea time experience and course work earned while in the military are not aligned with Coast Guard licensing requirements. As an example, more than thirty courses provided by the U.S. Army have been accredited by the Coast Guard, as compared to one course offered by the Navy. Several industry representatives are working with the Maritime Administration and military services to correct this situation.

A change in law included in the Omnibus Appropriations bill approved in December has created uncertainty in the domestic tanker industry. Under law dating to the 1970s, crude oil could not be exported from the United States, with limited exceptions. This limitation contributed significantly to basic expectations for the exploration, production and transportation of domestic crude oil. Contracts were signed and trading patterns developed accordingly. As noted, for example, crude oil's share of domestic tanker transportation volumes jumped from less than 10 percent five years ago to more than 30 percent today. Because of the change in law, crude oil exports are now permitted. An important question in the maritime industry is the extent to which this change will cause a reduction in domestic trading volumes, and thereby adversely impact the investments in new tonnage, some of which has yet to come on line.

Safety and environmental performance are the most important operational considerations for the American maritime industry. Lost-Time Incidents (LTIs) is a standard measure of worker safety performance used in the maritime industry and in other industrial activities. “Spills to water” is another key metric, for environmental performance. Management, mariners and our customers maintain a constantly renewed focus on safety and environmental performance. This has led to greater awareness, better measures, and more sophisticated training programs throughout the industry. Crowley's company-wide LTI rate, for example, has declined by more than 80 percent over the past four years. Another domestic maritime company, Alaska Tankers, has achieved a remarkable record of only one LTI (broken finger) since 2001.<sup>3</sup> Crowley's tanker business recently passed the *one billion barrel* mark in petroleum transfers over a period of about ten years. During that time, accumulated spills to water totaled about 6.2 gallons. This kind of performance puts the American maritime industry in the elite class of operators worldwide. It is, however, not

mander, U.S. Transportation Command (2016); Gen. Paul Selva, current Vice Chairman of the Joint Chiefs of Staff (2015); Adm. Paul Zukunft, Commandant, U.S. Coast Guard (2014); and many others.

<sup>3</sup>See, Alaska Tanker Company presentation, “Mindfulness and Total Worker Health,” Oregon Health and Science University, Fall 2015.

the end game, as the ultimate goal for Crowley and other American maritime companies is zero—zero harm to persons, property and the environment.

I will briefly mention the domestic maritime offshore development industry, which has been an important source of jobs and growth in recent years, but has seen radical changes in the direction of its markets. Based primarily in states around the Gulf of Mexico and Alaska, this industry is comprised of those who build, operate and crew the vessels needed to develop offshore energy installations. The industry boomed when oil prices were relatively high, with dozens of technically advanced vessels being built in U.S. shipyards to support exploration and development activities. This contributed to a boom in employment opportunities for mariners having the technical knowhow to operate these vessels. The tragic loss in 2010 of the Deepwater Horizon drill rig and the ensuing environmental disaster brought offshore development to a near standstill, which had a profound impact on maritime and other related industries. While the industry was able to begin recovering once development resumed, the radical drop in oil prices has once again brought offshore exploration and production to a crawl, with many major projects being canceled in the Gulf and in Alaska.<sup>4</sup> Hundreds of vessels are laid up, and the number of active crew is down dramatically.

### **Domestic Liner Industry**

The domestic liner industry refers to the container shipping business primarily in the non-contiguous domestic trades between the U.S. Mainland and Puerto Rico, Hawaii, Alaska and Guam. Carriers in these markets move most of the consumer products and other goods shipped from the Mainland to these locations, as well as moving goods produced in these locations back to the Mainland.<sup>5</sup> These markets have been impacted by the exit of Horizon Lines last year. Horizon terminated service to Puerto Rico, and sold its business in the other trades to the Pasha Group (Hawaii) and Matson Navigation (Alaska).

Of critical importance is the ability of carriers in domestic liner markets to reinvest in their fleets. In the Puerto Rico trade, TOTE Maritime has now deployed two new ships that are the first LNG-powered containerships in the world. Crowley also is renewing its fleet with two LNG-powered container/RoRo ships, to be delivered in 2017–18. Both carriers are investing in terminal facilities in Puerto Rico, with Crowley’s \$100 million investment one of the larger capital projects on the Island. Further, both fleets call in Jacksonville, Florida, which has triggered investment there in terminals, liquefaction plants, and other infrastructure needed to supply LNG fuel to these fleets. Major regulatory and public education efforts are underway in tandem with these investments.

The significance of this investment cannot be overstated. American carriers have triggered the construction in U.S. shipyards, and deployment in U.S. domestic service, of vessels that may prove to be prototypes of the world shipping fleet as it begins to transition to extremely low-emissions propulsion. These vessels bring significant environmental benefits to Puerto Rico, where air quality is a major concern. They also establish a substantial demand platform that enables the full development of American natural gas for use in transportation and other businesses in the Southeast and throughout the country. It is a game changer.

Before turning to the other trades, two additional points should be noted as to Puerto Rico. Carriers in the trade have supported efforts by political leaders on the Island and on Capitol Hill to develop a legislative package that will help stabilize the economy. In general, the carriers and other Mainland businesses interested in Puerto Rico have supported a package that includes an appropriate mechanism to restructure bond debt, to create a control board with limited powers help the Puerto Rican government work through its financial challenges, and other measures. In Crowley’s case, we took this unusual step based on our sixty years of commitment to the Island, recognition that the Puerto Rican economy is in rough shape, and our belief that Congress has a critical role to play in righting the ship.

A few have taken this legislative activity as an opportunity to urge that a Jones Act exemption for Puerto Rico be included in the package. They have offered no credible proof that such a change would help Puerto Rico, and we are confident it would do more harm than good both for Puerto Rico and for the country generally. Such a change would put at risk the reliable, efficient service the Island currently

<sup>4</sup> See, e.g., Alixpartners, “Oil Price Drop Sinks Offshore Supply Vessel Market,” January 2016.

<sup>5</sup> Note that U.S. flag vessels are not required for shipment of goods in non-domestic purchase/sale transactions, i.e., from or to vendors/customers outside the United States. For example, about one-third of Puerto Rican consumer goods, and most of its energy resources, are sourced from foreign sellers and shipped into Puerto Rico directly on foreign flag vessels, which account for the majority of all ship calls in San Juan.

receives, as well as hundreds of private sector jobs on the island, with no offsetting gains. It would also send a chilling message that would bring further investment in vessels built in U.S. shipyards to a standstill.

A second and related point concerns the supply of LNG to the Island. One of the primary issues in Puerto Rico (as in other offshore locations) is the high cost of electricity. This results in part from its island location and limited market size, and also from concerns with the government-owned utility, PREPA. The high electricity cost not only hits consumers on the island, but also key employers on the Island—manufacturers and other industrial facilities that have high energy usage. To help such employers reduce the cost and improve the reliability of their electrical service, Crowley subsidiary Carib Energy began a small-scale LNG supply business to customers on the Island. Carib provides LNG using 40-ft. ISO tanks, which are filled up at a natural gas plant on the Mainland, and shipped to the customers' facility in Puerto Rico.

This is offered as an example of the private sector helping to find solutions to the Island's problems. It is not suggested to be a suitable method for supplying LNG to PREPA, which currently purchases bulk LNG primarily under contract with a supplier in nearby Trinidad. If and when PREPA seeks new bulk LNG supply contracts, it can ask for bids from U.S. suppliers knowing that American bulk LNG vessels will be available to provide an efficient and cost-effective service when needed. Allegations that shipping costs would materially increase the cost of U.S.-sourced LNG to the Island are unfounded.

As to the other non-contiguous trades, as noted, Horizon Lines sold its Hawaii business last year to the Pasha Group, and its Alaska business to Matson Navigation. Also last year, Pasha took delivery of its second new vessel in the Hawaii trade, and is continuing to deploy the existing ex-Horizon vessels to meet the needs of shippers in the trade. Similarly, Matson has orders pending for two new ships under construction at Philly Shipyard. Like Pasha, it will also continue to operate the vessels it acquired from Horizon Lines in the Alaska trade. While there are other carriers in all three noncontiguous trades, none has announced their fleet renewal plans.

Lastly, we are mindful of the tragic loss of the *El Faro* last October, which was sailing in the Puerto Rico trade. We have a duty as members of the maritime community to remember the officers and crew, and learn from this tragedy. Because the government's investigation of the root cause of the sinking remains active, however, it would not be appropriate to comment on any particular aspect of this matter.

#### **International Shipping Markets—Foreign Flag**

Crowley participates in the international shipping market in two ways. First, it provides a comprehensive suite of liner and logistics services to customers in the regional trades involving the Caribbean islands, Central America and parts of South America. The vessels used to serve these markets are a mix of owned and chartered in tonnage. They are sized and specially configured for customers in these trades. Crowley has developed the expertise and deployed the full range of systems necessary to handle all aspects of the business—to book, track, document, and insure the cargo, coordinate trucking, manage marine terminals, stow vessels, arrange delivery at destination, manage invoicing, etc. Additional logistics services include Customs brokerage, warehousing and consolidation, among others.

The international liner business is generally subject to the strength or weakness of the overall economy. Strong global economic growth usually leads to more international trade and stronger liner shipping companies. Conversely, relatively flat economic performance such as we are currently seeing leads to poor financial performance, which can be magnified by the tendency of the industry to build more vessel capacity than the market can absorb. This is partly a result of carriers seeking lower unit costs by building and deploying larger ships.<sup>6</sup> Excess capacity also results from shipyards building more vessels than the market requires based on the desire (frequently fed by government incentives) to continue employment of the shipyard, instead of any market need for the capacity.

Another factor currently impacting the international liner industry is the slowdown in the growth rate of global trade. For decades the average annual rate of growth in U.S. foreign trade was more than 10 percent. In more recent years it has been less than 5 percent. While still growing, the change in the rate of growth can have an unfavorable effect if planning and investment has assumed more substantial trade and economic activity.

<sup>6</sup>For example, the *MSC Zoe* was delivered last year and has a reported capacity of more than 19,000 twenty foot equivalent units. The units carried on this single vessel, placed end-to-end, would stretch more than seventy miles.

The result is an international liner industry today that is under serious economic pressure. Like most businesses in these circumstances, the liner carriers are looking for ways to survive primarily by cutting costs. This includes not only reductions in personnel and other traditional measures, but also actions more unique to the transportation industry. For example, like airlines, liner shipping companies may skip port calls or entire voyages for economic reasons, *i.e.*, where there is not enough cargo to cover the costs. Carriers may also seek ways to save cost by rationalizing capacity in a given market. Rather than two carriers sailing two vessels half full between the same two ports, the market may be better off if the carriers sail one vessel in that trade, and continue to compete with each other to sell space on that vessel. That is the basic logic behind vessel sharing agreements (VSAs), which are widely adopted today throughout the industry. Customers benefit from such arrangements because they take cost out of the system, yet retain the same number of competitors seeking to provide the service.

The regulatory system that facilitates the formation of VSAs and similar cooperative working arrangements is the Shipping Act of 1984 as administered by the Federal Maritime Commission. VSAs are filed with the FMC and become automatically effective—are presumptively lawful—unless the agency raises concerns within 45 days. The parties to the agreement can then implement it with regulatory confidence once the waiting period expires. The alternatives to this system are either to go ahead with the agreement and risk antitrust prosecution, or to submit the agreements for antitrust review by the Justice Department, with no specific procedures or deadline for action. The Shipping Act/FMC process is clearly preferred by most in the industry.

As may be expected in times of financial stress, the industry is also seeing more merger and acquisition activity by carriers. The FMC does not have jurisdiction over these types of transactions. They must be reviewed under normal antitrust guidelines. It should be noted that for both cooperative working agreements and M&A transactions, regulatory approval from multiple jurisdictions may be required. Indeed, competition authorities in the EU and China have rejected or placed conditions on carrier agreements that did not appear to trigger comparable concerns from U.S. authorities.<sup>7</sup>

#### **International Shipping Markets—U.S. Flag**

As noted, Crowley participates in two ways in the international shipping market. In addition to owning and operating its own liner and logistics service in the Central America and Caribbean trades, Crowley also provides technical ship management for other vessel owners operating ships worldwide. Crowley does not market or sell the transportation services provided by these vessels. It instead provides the officers and crew needed to sail them, as well as a range of other services (vessel maintenance, insurance, port services, etc.) as agreed by the parties. Most of the vessels operated by Crowley on behalf of third parties fly the U.S. flag.

It is widely known that the U.S. flag fleet operating in international trade has been in decline. The reasons behind this are noted at the beginning of this statement. It is not enough that the tax and regulatory burdens of ships operated under the U.S. flag have been reduced from time to time, and American carriers have been among the most innovative in the industry. Even so, U.S. flag costs are among the highest in the world, reflecting the fact that, compared to most other shipping registries, U.S. flag ships are a part of the first-world economy, and operate under a relatively mature tax and regulatory system. Those who would simply say, “Let the market decide” should understand that there will be no U.S. flag ships operated in international commerce if that sentiment prevails entirely.

Virtually no one involved in the industry desires that outcome, and more importantly, U.S. military leaders have very clearly stated that it would not be an acceptable one.<sup>8</sup> American national security and readiness require an ability to station and resupply our armed forces anywhere in the world. This means not only having access to modern vessels and equipment, but also to American seafarers who know how to operate these vessels and systems because they do so on a regular basis to ports all over the world. Sealift remains a core function of our national security infrastructure, even in times of air, space and cyber warfare. Overseas deployment of U.S. military forces is a continuing fact of life, and it would not be possible to trans-

<sup>7</sup> See, *e.g.*, “Maersk, Partners Surprised by Chinese Regulator,” *Wall Street Journal*, updated June 17, 2014; “CMA CGM Compromising to Get EU’s Nod on NOL Takeover,” *World Maritime News*, April 2016.

<sup>8</sup> See, *e.g.*, “Statement of Lieutenant General Stephen R. Lyons, United States Army Deputy Commander, United States Transportation Command,” before the Subcommittee on Seapower and Projection Forces, House Armed Services Committee, March 22, 2016.



port and sustain a large force and accompanying equipment from the U.S. via any other mode of transportation. Similarly, it would be exponentially more expensive to American taxpayers for the U.S. military itself to replicate the vessels, equipment, logistics networks, and manpower needed to provide a credible and comparable sealift capability.

Accordingly, two long-standing government programs have enabled a number of U.S. flag vessels to continue operating commercially in international trades. The Maritime Security Program provides a flat-rate stipend to the owners of contracted U.S. flag vessels to offset the extra cost of operating under the U.S. flag. The contracts also require the owners to participate in the Voluntary Intermodal Sealift Agreement, a readiness program covering the use and potential requisition of U.S. flag vessels entered into MSP. The second program, Cargo Preference, generally requires that government shipments move on U.S. flag vessels. It was intended that the combination of the two programs would provide enough of an incentive for carriers to participate. MSP by itself would not be enough.

The drawdown of military activity in the Middle East, coupled with the loss of EXIM Bank and other civilian cargoes, has led to the withdrawal of several vessels from the U.S. flag, with the risk that more will follow. According to the Maritime Administration, less than 80 U.S. flag commercial vessels now operate in international trade, vs. some 9,000 foreign flag vessels that call at U.S. ports. To stem the tide, Congress agreed to increase the stipend payable to MSP carriers, so that there would remain a modest financial incentive to remain under the U.S. flag built directly into the MSP. It is essential that this increase be fully funded in FY 2017.

Thank you for your attention and I look forward to your questions.

#### ATTACHMENTS

##### SUMMARY OF CROWLEY MARITIME CORP. BUSINESSES—APRIL 2016

Crowley Maritime Corporation is a U.S.-owned and operated marine solutions, energy and logistics services company organized into six business units: Domestic liner services in the Puerto Rico trade; International liner services in Caribbean and Central America markets; Logistics; Marine contract solutions; Petroleum transportation; and Petroleum distribution and marine services in Alaska.

The primary services offered by these six business lines include:

- Shipping and Logistics
- Freight Forwarding and Global Project Logistics
- Alaska Fuel Sales and Distribution
- Petroleum and Chemical Transportation
- Harbor Ship Assist and Tanker Escort
- Global Ship Management
- Marine Salvage, Wreck Removal and Emergency Response (through a 50 percent ownership position in Ardent Global)
- Marine Solutions (including Naval Architecture, Engineering and Project Management)
- Offshore Services (including Heavy Lift Barge Transportation and Ocean Towing)
- Liquefied Natural Gas (specialized services include transportation, sales and logistics; vessel design; engineering; storage supply and management)

The company was founded in 1892, when founder Thomas Crowley—the grandfather of current chairman and CEO Thomas B. Crowley Jr.—purchased an 18-foot Whitehall boat to provide transportation of personnel and supplies to ships anchored on San Francisco Bay. The present structure, in which Crowley Maritime Corporation serves as a holding company for business lines and all subsidiaries, was put in place in 1992. The company is wholly and privately owned by the Crowley family and Crowley employees. Crowley-owned subsidiaries include: Jensen Maritime Consultants and Customized Brokers

Today, Tom Crowley Jr. and his leadership team direct a company with approximately \$2.2 billion in annual revenues and approximately 5,300 employees. Crowley maintains a fleet of more than 200 vessels, consisting of RO/RO (roll-on-roll-off) vessels, LO/LO (lift-on-lift-off) vessels, articulated tug-barges (ATBs), tugs and barges. Land-based facilities and equipment include terminals, warehouses, tank farms, office buildings, trucks, trailers, containers, chassis, cranes and other specialized vehicles.

### Crowley's Support to the U.S. Government

From raising the coal barge *City of Panama* during World War I, to providing emergency logistics support to the Defense Department for rapid deployment of Ebola treatment units in West Africa in 2014, Crowley has consistently been a responsive partner of the United States Government.

#### *Selected Past Performance Highlights*

- Over 60 years ago, Crowley helped the U.S. Government secure the *DEW Line* radar installations (*Distant Early Warning*) on the perimeter of Alaska.
- Vessel management for *United States Maritime Administration, Military Sealift Command*, and other agencies including ROCON ships, BOBO class ships, T-AGOS/T-AGM ships and others.
- *Navy Superintendent of Salvage (SUPSALV)* contract holder since 1976 to supplement the Navy's salvage, diving, and search and recovery capabilities. Projects have included: Air Alaska wreck recovery; *Ehime Maru* recovery and relocation; ship salvage engineering; wreck removal; oil spill contingency plans and development and modification of salvage firefighting equipment
- First responder and the largest marine contractor during the *M/T Exxon Valdez* oil spill response.
- Logistics, warehousing and transportation support for various *military relief cargoes (USAID)* at the request of the U.S. Government to Haiti, Dominican Republic, Cuba and Central America.
- Helped clear *Johnston Island* of human habitation for its return to a bird sanctuary as it was originally deemed by President Coolidge.
- Involvement in various *military tows/assists* including the: *USS Missouri*, *USS Oriskany*, *Everett*, *Lincoln*, *USS Iowa*, *Oklahoma*, *USS New Jersey*, *USS Belleau Wood*.
- Crowley carries the *US Postal service* deliveries between the U.S. and the Virgin Islands.
- Assistance with clean up following the first *Desert Storm*.
- Delivery of 12,000 tons of aggregate and sand to *Kwajalein Atoll* from Masan, South Korea for the U.S. Army Corp of Engineers to construct a motor pool facility on the military installation at Kwajalein.
- Participation in various hurricane disaster relief responses providing vessel support and relief aid most notably during—*Hurricanes Katrina and Sandy*.
- Emergency humanitarian aid shipping and logistics, marine salvage and temporary port infrastructure solutions following the *Haiti Earthquake*.
- Completed the largest, most technically challenging marine salvage job in history, *Costa Concordia*.
- Ship management and logistics support for the *Syrian chemical weapons* destruction project.
- Logistics, personnel and transportation support for medicine and other emergency supplies in Liberia during the 2014 *Ebola outbreak*.

---

#### BIOGRAPHY

Michael G. Roberts—Sr. VP and General Counsel, Crowley Maritime Corp.

Legal and executive responsibilities with Crowley since 1991. Was based in Washington, DC prior to relocating to Jacksonville in 2008 to become a member of the company's senior leadership team. Overall responsibility for strategic government business, government relations, regulatory, legal, risk management and insurance functions of the company.

Actively involved since 1994 in the development of the Maritime Security Program and VISA, Jones Act matters, Ocean Shipping Reform Act, and various maritime initiatives. Member/coordinate company participation in industry trade groups, including NDTA, Navy League, American Maritime Partnership, American Waterways Operators, Chamber of Shipping of America, and others.

Earned Bachelor of Arts degree with high honors from Michigan State University; JD degree *cum laude* from American University, Washington College of Law.

*Crowley* is a leading American maritime company. Founded in 1892 in San Francisco Bay, the company today has more than 5,000 employees and \$2B in annual revenue. It is one of the top private sector employers of the U.S. Merchant Marine.

Over the past few years, it has invested or committed about \$2B in new US-built vessels. Lines of business include domestic and international liner shipping (primarily in Caribbean/Central America markets); logistics (including trucking, warehousing, customs brokerage, insurance and other services); domestic petroleum transportation (owned fleet of 17 to 21 vessels); technical services (including third party ship management, naval architecture & engineering, project management, marine salvage and wreck removal); and petroleum distribution (tank farms and road terminals in Alaska), ship assist/escort, and oil spill prevention and response in Valdez, AK. Crowley is a privately-held company.

Senator FISCHER. Thank you.

Next, we have Mr. Klaus Luhta, Chief of Staff of the International Organization of Masters, Mates and Pilots.

Welcome, sir.

**STATEMENT OF KLAUS LUHTA, CHIEF OF STAFF,  
INTERNATIONAL ORGANIZATION, MASTERS, MATES & PILOTS**

Mr. LUHTA. Chairwoman Fischer, Ranking Member Booker, and members of the Subcommittee, good morning. Thank you for holding this very important hearing on these meaningful issues.

And thank you to your staffs, who work tirelessly and diligently in putting these things on. It is much appreciated.

I am Klaus Luhta, Chief of Staff to the President of the International Organization of Masters, Mates & Pilots and a licensed professional mariner.

I am pleased to appear today to submit this statement on behalf of Masters, Mates & Pilots, the American Maritime Officers, the Marine Engineers' Beneficial Association, the Marine Firemen's Union, the Sailors' Union of the Pacific, and the Seafarers International Union. Our organizations proudly represent the seafaring men and women who continue the tradition of American mariners since the founding of our great Nation to sail into harm's way whenever and wherever needed by our country in order to support and supply our military overseas.

It is these same American mariners who ensure that America's foreign and domestic seaborne trade, upon which our economy is based, is not exclusively dependent upon foreign nationals.

We are at a defining juncture in determining the maritime future of the United States. The critical need for our industry has been recognized during every international crisis in our Nation's history. Its need and importance cannot be questioned.

In May 2015, Rear Admiral Thomas Shannon, Commander of the Military Sealift Command, made clear the continued need for U.S. flag Merchant Marine and its American crews to ensure the military's security of our Nation. As stated by Admiral Shannon, "It is our U.S.-flag merchant fleet and our mariners that ensure that our soldiers, sailors, airmen and marines are supplied. From Inchon to Iraq, our mariners and our maritime industry delivered. . . . Let us not as a Nation sign away our remaining sealift capacity to non-U.S. flag fleets sailed by non-U.S. mariners."

Paramount to ensuring that a viable U.S. flag Merchant Marine exists when the call goes out and that those ships are sufficiently manned with properly trained U.S. licensed and unlicensed mariners is the Maritime Security Program more commonly referred to as MSP.

My written testimony provides in-depth detail on the importance of MSP to sustaining a viable American merchant fleet. But in short, MSP allows for a level playing field for American carriers and ensures a pipeline of highly trained U.S. mariners to man those vessels.

The second way of maintaining the fleet—now keep in mind this isn't growth; this is just maintaining what we currently have—is carriage of U.S. Government-generated cargo aboard U.S. flag vessels. All too often in the past, Federal agencies and departments have ignored U.S. flag shipping requirements for the carriage of cargos financed in whole or in part by the American taxpayer and the Federal Government.

Not only are U.S. flag vessels denied cargos that by law should be transported by U.S. flag vessels when available at fair and reasonable rates, but there is no recourse in the law when it is ultimately determined that the law was violated. We would encourage Congress and the administration to make clear to all Federal shipper agencies that privately owned U.S. flag commercial vessels must be used for the carriage of U.S. Government-generated cargos, as required by law.

When we consider the potential for maritime industry growth, export of liquefied natural gas from the United States creates a tremendous opportunity to increase the size of the U.S. flag commercial fleet and to provide much needed employment opportunities for American mariners. But this can only be accomplished through intentional effort.

My written statement details means that would accomplish facilitation of economic growth in LNG shipping for U.S. flag LNG carriers and the mariners that safely operate those vessels.

The U.S. flag Merchant Marine continues to answer the call whenever and wherever needed around the world. As the fourth arm of defense, the American Merchant Marine is honorable and fundamental to American industry and American security and defense interests around the globe.

Madam Chair, we stand ready to work with you to achieve these objectives, and we sincerely appreciate your interest in this matter. I yield the remainder of my time and welcome your questions.

[The prepared statement of Mr. Luhta follows:]

PREPARED STATEMENT OF KLAUS LUHTA, CHIEF OF STAFF,  
INTERNATIONAL ORGANIZATION, MASTERS, MATES & PILOTS

Chairwoman Fischer, Ranking Member Booker and Members of the Subcommittee:

Good morning.

I am Klaus Luhta, Chief of Staff to the President of the International Organization of Masters, Mates & Pilots and a licensed professional mariner. I am pleased to appear today and to submit this statement on behalf of Masters Mates & Pilots, the American Maritime Officers, the Marine Engineers' Beneficial Association, the Marine Firemen's Union, the Sailors' Union of the Pacific, and the Seafarers International Union.

Our organizations proudly represent the seafaring men and women who continue the tradition of American mariners since the founding of our Nation to sail into harm's way whenever and wherever needed by our country in order to support and supply our military overseas. It is these same American mariners who ensure that America's foreign and domestic seaborne trade, upon which our economy is based, is not exclusively dependent upon foreign nationals.

The continued operation of the U.S.-flag foreign trade fleet, and the development, implementation and funding of the programs that support our fleet, enhance its economic viability, increase its ability to compete for a larger share of America's foreign trade and ensure its ability to continue to serve as our Nation's fourth arm of defense are extremely important to the jobs of the men and women our labor organizations represent. Consequently, we are extremely pleased that this hearing is being held and we thank you, Madam Chairman, Ranking Member Booker and your Subcommittee for the opportunity to participate in this hearing and to express our views on how Federal policy and programs can further strengthen and enhance the performance of the U.S.-flag maritime industry.

"In Peace and War" is the motto of the U.S. Merchant Marine. The critical need for our industry has been recognized during every international crisis in our Nation's history. In 1992, General Colin Powell, then-Chairman of the Joint Chiefs of Staff stated: "Fifty years ago, U.S. merchant vessels . . . were battling the frigid seas of the North Atlantic to provide the lifeline to our allies in Europe. The sacrifice of those mariners was essential to keeping us in the war until we could go on the offensive . . . In World War II, enemy attacks sank more than 700 U.S.-flag vessels and claimed the lives of more than 6,000 civilian seafarers . . ."

More recently, in 2008, Major General Kathleen Gainey, Commander, Military Surface Deployment and Distribution Command, stated that "The merchant marine has always been there beside us . . . There is no amount of thanks that I could give you, because I am here to tell you, having deployed twice, I know how critical it is that equipment and those supplies are delivered on time . . . You are the fourth arm of defense and you are critical to this Nation."

Finally, in May 2015, Rear Admiral Thomas Shannon, Commander, Military Sealift Command, made clear the continued need for a U.S.-flag merchant marine and its American crews to ensure the military security of our Nation. As stated by Admiral Shannon: "It is our U.S.-flag merchant fleet and our mariners that ensure that our Soldiers, Sailors, Airmen and Marines are supplied. From Inchon to Iraq, our mariners and our maritime industry delivered . . . Let us not as a nation sign away our remaining sealift capacity to non-U.S.-flagged fleets sailed by non-U.S. mariners."

Nevertheless, despite the repeated expressions from leaders in the Department of Defense (DOD) that our Nation needs a U.S.-flag merchant marine, the privately-owned U.S.-flag merchant marine has, in recent years, declined, threatening the ability of our Nation to provide the commercial sealift capability and U.S. citizen mariners that DOD requires. In March 2016, this Subcommittee received testimony from Maritime Administrator Paul Jaenichen on the state of our industry. He pointed out that the number of vessels in the U.S.-flag foreign trade fleet declined from 106 vessels in 2011 to 78 vessels at the end of February 2016. The reduction in vessels and the loss of the associated seafaring billets for American mariners result in a reduction in the pool of available mariners to meet DOD requirements. As further stated by Administrator Jaenichen, there are approximately 11,230 qualified American mariners available to crew commercial or government-owned sealift ships. He cautioned that in the event of a prolonged activation of Maritime Administration and Military Sealift Command surge vessels, an additional 3,200 mariners would be needed.

It must be emphasized that it takes many years for an individual to gain the experience and sea-time necessary to obtain U.S. Coast Guard-issued licenses and credentials. Our country and our industry will not be able to recover overnight from the continued downsizing of our fleet and the outsourcing of American maritime jobs when the call goes out for mariners to once again respond to our Nation's need. Young people will not be encouraged to enter an industry that is ignored or abandoned by policy-makers and that promises no realistic future for employment.

Rather, the government, U.S.-flag shipping companies and America's maritime labor organizations should continue to work together, as we did last year to address issues surrounding the Maritime Security Program, to modify and enhance existing programs and to create new programs and opportunities that will increase the number of vessels operating under the U.S.-flag, the amount of cargo carried aboard U.S.-flag vessels, and the shipboard employment opportunities for American licensed and unlicensed merchant mariners. To be available when needed in time of war or other international emergency, the U.S.-flag merchant marine must be supported during time of peace. To ensure that the Department of Defense has the commercial sealift capability and American mariners it needs whenever and wherever needed, U.S.-flag vessels and their U.S. citizen crews must be actively engaged in the carriage of government and commercial cargoes.

The development of meaningful, realistic maritime policies and programs must be accompanied by a reaffirmation from both Congress and the Administration that our

country must have a strong, viable and competitive U.S.-flag merchant marine owned and operated by American citizens and crewed by American licensed and unlicensed merchant mariners in order to meet the economic, military and homeland security requirements of our Nation. Without this reaffirmation, and without a clear commitment that the government will work diligently to achieve this objective, we will continue to lack the coordinated approach to a national maritime policy our industry needs. Consequently, we again offer our appreciation to you, Madam Chairman, to Ranking Member Booker and the Members of your Subcommittee for taking the initiative to schedule this series of hearings and your willingness to examine ways in which Federal programs and policies can enhance the performance of the U.S.-flag merchant marine.

#### **Maritime Security Program**

One of the key components of American maritime policy is the Maritime Security Program. This program authorizes a maritime security fleet of 60 privately-owned, militarily-useful U.S.-flag commercial vessels that is supported by an annual stipend intended to help offset the cost of operating under the United States-flag.

The Maritime Security Program (MSP) is a unique government—private shipping industry partnership that gives the Department of Defense (DOD) the commercial sealift capability it needs while saving the American taxpayer the billions of dollars it would take for DOD to develop and maintain this capability itself. Developed under President George H.W. Bush, and first implemented under President Bill Clinton, full funding for MSP has been supported by each President and Congress since 1996.

Since 2009, privately-owned U.S.-flag commercial vessels and their civilian U.S. citizen crews have transported more than 90 percent of the sustainment cargo needed to support U.S. military operations and rebuilding programs in Iraq and Afghanistan. Significantly, vessels enrolled in MSP carried 99 percent of these cargoes. Without the assured U.S.-flag commercial sealift capability provided by MSP, U.S. troops stationed overseas could find themselves dependent on foreign vessels and foreign crews to deliver the supplies and equipment they need to do their job on our behalf.

Last year, Maritime Administrator Paul Jaenichen told the House Coast Guard and Maritime Transportation Subcommittee that “The most significant challenge facing the MSP is the declining Department of Defense cargo due to the drawdown of operations in Iraq and Afghanistan coupled with the over 80 percent reduction in personnel and military bases overseas.”

Echoing the concern that current developments are threatening the continued availability of the U.S.-flag vessels, U.S. crews and global logistics systems provided by MSP to DOD, General Paul Selva, Commander, United States Transportation Command, told the Senate Committee on Armed Services in March 2015, “The reduction in government impelled cargoes due to the drawdown in Afghanistan and reductions in food aid. . .are driving vessel owners to reflag to non-U.S.-flag out of economic necessity. . .With the recent vessel reductions, the mariner base is at the point where future reductions in U.S.-flag capacity puts our ability to fully activate, deploy and sustain forces at increased risk.”

These factors affect the ability of U.S.-flag vessel operators to keep their vessels under the U.S.-flag and to reinvest in new U.S.-flag ships. New ships are long term assets, eligible under existing law to participate in MSP for 25 years. MSP funding must be sufficient to maintain a robust U.S.-flag fleet and provide the long term stability to justify continued commercial investment in ships that cost more than \$100 million each. Adding to this is the ongoing need for continued upgrading and investment in the commercial global intermodal networks that the MSP carriers bring to DOD.

Consequently, significant reductions in the amounts of defense and other government cargoes available to U.S.-flag vessels; the proliferation of tax and other economic incentives available to foreign flag vessels and crews but not to U.S.-flag vessels and crews; the regulatory compliance requirements imposed only on U.S.-flag vessels by the U.S. Government; and the growing competition for cargoes from foreign flag of convenience vessel operations which fail to meet the standards applicable to U.S.-flag vessels necessitate full funding for the MSP.

We are extremely pleased that Congress, due in no small measure to your assistance Madam Chairman and the support of this Subcommittee, increased funding for the Maritime Security Program for Fiscal Year 2016. This increase, which provided each vessel participating in the MSP with \$3.5 million rather than the previously authorized \$3.1 million for FY 2016, represented an important first step in ensuring that the funding levels provided by the Maritime Security Program more realistically reflect the reductions in the amount of cargo available to U.S.-flag vessels.

In addition, and especially important, we are pleased that Congress recognized that further adjustments in funding for the Maritime Security Program are needed. Language was included in Public Law 114–113, the Consolidated Appropriations Act of 2016 signed into law by President Obama that includes \$299,997,000 for MSP for FY17. As authorized by PL 114–113, each vessel participating in the MSP would receive \$4,999,950 million in FY 2017.

We believe it is absolutely essential to the continued operation of the 60-ship maritime security fleet that Congress appropriate the authorized \$299,997,000 million for the Maritime Security Program for FY 2017. As noted by Senators Booker and Wicker and fourteen of their colleagues in a March 17, 2016 letter to the Senate Transportation Appropriations Subcommittee, “The Program utilizes existing U.S. maritime private sector capabilities at a fraction of the cost of what it would take if the Federal Government were to replicate the vessel capacity and global intermodal systems made available to the Department of Defense by MSP contractors who continuously develop and maintain modern logistics systems for commercial and defense purposes. The cost to the government of replicating the vessels and intermodal system is estimated at least \$65 billion.”

In January 2016, General Darren McDew, Commander, United States Transportation Command, stated: “As a military professional and senior leader, I think about and plan for what the future may hold and I would tell you we must prepare for the real possibility we will not enjoy the uncontested seas and international support experienced in 1991. If either of those possibilities becomes a reality, and if we remain committed to responding to security incidents around the globe, the only way of guaranteeing we decisively meet our national objectives is with U.S. ships operated by U.S. mariners.”

Therefore, to ensure that the privately-owned militarily-useful U.S.-flag vessels enrolled in the MSP, the MSP vessel operators’ worldwide logistics systems, and their U.S. citizen crews remain available to DOD to advance America’s security interests and to support and supply American troops overseas, we ask your help to secure full FY 2017 funding for the Maritime Security Program at the level authorized by PL 114–113.

#### **Carriage of U.S. Government Generated Cargoes**

U.S.-flag cargo preference shipping requirements are an essential means to help ensure the continued availability of the privately-owned U.S.-flag commercial fleet which, along with its associated American maritime manpower, is a critical national defense asset. Without a fully and appropriately funded Maritime Security Program and without full compliance with cargo preference requirements, the U.S. Government and the American taxpayer would necessarily spend far in excess of the cost of these programs to replicate the national security capabilities of the privately-owned U.S.-flag commercial fleet.

All too often in the past, Federal agencies and departments have ignored U.S.-flag shipping requirements for the carriage of cargoes financed in whole or part by the American taxpayer and Federal Government. Not only are U.S.-flag vessels denied cargoes that by law should be transported by U.S.-flag vessels when available at fair and reasonable rates, but there is no recourse in the law when it is ultimately determined that the law was violated. We would encourage Congress and the Administration to make clear to all Federal shipper agencies that privately-owned U.S.-flag commercial vessels must be used for the carriage of U.S. Government generated cargoes as required by law.

Along these same lines, we continue to support legislation that would make clear that the Maritime Administration has ultimate responsibility to determine if a Federal program is in fact subject to U.S.-flag cargo preference shipping requirements.

It is equally important that the Maritime Administration regularly exercise this responsibility, and that Congress ensure that this is in fact done. To this end, Congress should require that the Maritime Administration report to Congress on a regular basis and to document its actions and efforts, specifying the programs, departments and agencies it has reviewed as well as the actions taken to ensure full compliance with cargo preference requirements.

We further reaffirm our position that Congress should restore the U.S.-flag share of PL 480 Food for Peace and other humanitarian food aid cargoes to the 75 percent level that was in place beginning in 1985 until reduced to 50 percent in 2012. Food aid cargoes are the single greatest source of preference cargoes. It has provided more than half of the dry preference cargo tonnage available since 2002 and the availability of food aid cargoes will continue to become even more important as Department of Defense cargoes further decline with the drawdown of operations in Iraq and Afghanistan and the broad reduction in overseas and bases. It is no coinci-

dence that the size of the U.S.-flag fleet has shrunk by more than 26 percent since the 2012 reduction of the U.S.-flag share of food aid cargoes.

It is important to note that the GAO has reported that when the statutory share of food aid cargoes to be carried by U.S.-flag vessels was reduced from 75 percent to 50 percent, USDA shipping costs were not affecting at all and USAID shipping costs fell by less than 9 percent. The cost of increasing cargo preference requirements for food aid cargoes back to 75 percent has in the past been scored at only \$11 million per year.

In May 2011, General Duncan McNabb, Commander, United States Transportation Command, stated “The movement of U.S. international food aid has been a major contributor to the cargo we have moved under the cargo preference law that our U.S.-flag commercial sealift industry depends upon.” Similarly, in July 2015, Jeff Marootian, Assistant Secretary for Administration, United States Department of Transportation, stated “Cargo preference is a pillar that ensures America can activate and sustain a sealift fleet adequate to deploy and support the United States Armed Forces anywhere in the world . . . This program, which benefits both the public and private sectors, is less a burden on the taxpayer than the other options to provide the same capability.”

In addition, we would encourage the Department of Defense (DOD) to ensure that its policies fully encourage and promote the utilization of U.S.-flag commercial vessels. More specifically, DOD should give first priority to U.S.-flag carriers for the full end-to-end movement of defense shipments that include an ocean leg, thereby making use of the carrier’s entire network as committed to under Voluntary Intermodal Sealift Agreement (VISA) contracts.

We would urge that U.S.-flag vessels carrying U.S. Government cargoes be given priority loading and discharging rights in order to minimize or eliminate the costs to the U.S. Government associated with delays while U.S.-flag vessels wait to load and discharge taxpayer-financed cargoes.

#### **Encouraging the Use of U.S.-Flag Vessels for Energy Exports**

The export of liquefied natural gas from the United States creates a tremendous opportunity to increase the size of the U.S.-flag commercial fleet and to provide much-needed new employment opportunities for American mariners.

To realize this opportunity, we believe that the Secretary of Transportation should be required to report to the Congress on the steps taken to develop and implement a program to promote the carriage of LNG exports on U.S.-flag LNG vessels.

Secondly, in order to address one of the major competitive impediments to operating a U.S.-flag rather than a foreign flag LNG vessel, Congress should extend the provisions of section 911 of the Internal Revenue Code (the foreign source income exclusion) to American mariners working aboard LNG vessels engaged in the carriage of LNG exports from the United States. In the short term, extending section 911 to Americans working aboard vessels carrying LNG exports and thereby treating American mariners in the same fashion that foreign mariners are treated by their flag nations, we would be eliminating a significant economic disincentive to the employment of American mariners aboard foreign flag LNG ships. Without this opportunity for employment, Americans would not attain the seetime requirements and training needed to operate vessels in this trade, preventing the operation of LNG vessels under the U.S.-flag.

Finally, Congress should allow foreign built, foreign flag LNG vessels to document under the U.S.-flag to engage in the carriage of LNG exports in international trade without the need for any vessel construction-related changes provided they meet commonly accepted international standards. In other words, foreign flag LNG vessels meeting International Maritime Organization (IMO) requirements and holding a valid United States Coast Guard Certificate of Compliance for foreign flag LNG vessels entering U.S. waters would be deemed in compliance with all U.S. standards required for documentation under the U.S. flag.

#### **Conclusion**

Those of us who make our living going to sea in this honorable and fundamental American industry want our daughters and sons to have the same opportunities. A healthy U.S. Merchant Marine will safeguard our country’s military, economic and homeland security. We stand ready to work with you to achieve these objectives.

Thank you.

Senator FISCHER. Thank you very much. We will start with the first round of questions.



Mr. Bourne, you mentioned in your opening comments I guess a lot of solutions to questions I had for you, but I would just like to give you the opportunity, if you would like to elaborate on them. When you talk about the just-in-time shipping environment and the increased costs, I know you mentioned some of them, and I would welcome if you have additional information you would like to share on that.

Then also, as you look at the challenges that a company like Tyson is facing as it relates to markets abroad, you mentioned some of the issues on losing markets. As you faced with the West Coast port shutdown, those markets when they are lost, they are harder to pick up again, and we lose them to Brazil and Argentina and Australia on the meats.

Just briefly, did you have anything else you wanted to add on those points?

Mr. BOURNE. Surely. Thank you, Madam Fischer.

As it relates to, I guess the West Coast, I will start with that, that was a tremendous problem for all U.S. exporters. The sad part about it is that none of us had a dog in the hunt. It was something that was brought upon us for a variety of reasons that we don't need to go into here, but it certainly cost many millions of dollars for our company at Tyson as well as others.

Probably one of the most negative things that came out of that is that we deal in a commodity product that farmers and ranchers from Nebraska, from South Dakota, all through the Midwest, their livelihoods were put at risk, and their profitability was put at risk, because of this interruption.

As a result of shipping commodities, we are not shipping Sony TVs. So they can get commodities of beef and pork and poultry. They can get it anywhere the world.

Certainly, some of our biggest competitors for the Japan market are from Australia and from Brazil. And once you lose a customer, it's very difficult to get them back.

Our concern is, with these added issues brought forth by SOLAS, that we are going to have situations where we are going to have interruptions again, specifically on chilled, as I detailed my remarks. There is just no way, based on the just-in-time nature of this product, for it to be produced, shipped the same week that it is produced, received on the coast on Sunday, Monday. The cargo has to be transloaded to the containers, the steel boxes that go onto the ships that we don't own, don't maintain. It's just a very costly process.

Senator FISCHER. Thank you for some of the solutions you offered for us to look at. Thank you.

Mr. Roberts, in your testimony, you noted that Crowley's tanker business has recently passed the \$1 billion mark in petroleum transfers onto tanker vessels. I think you have a remarkable record of a total of only 6.2 gallons spilled over the last 10 years.

So what are some of the ways that Crowley is working to ensure the efficient operation of your tanker vessels on our Nation's waters, especially as energy shipping I hope continues to grow?

Mr. ROBERTS. Thank you.

We have put a tremendous amount of focus on safety. It is the top priority of the company. It is a cultural issue with us. We start

every meeting with a safety moment, a little prayer in advance of the discussion, and it is focused on safety. It may be changing your wiper blades or it may be something very relevant to working on a terminal or on the vessels themselves. So it is part of the culture of the company that starts right at the very top and is supported all the way through.

It is something that our customers in the oil business require. They expect it. They understand that it costs money to do that, and they are willing to fund that activity.

But it is a remarkable change. I think if you look at where the industry was 10 or 15 years ago, and the progress has been made, it is a very good story.

Senator FISCHER. As you look ahead to hopefully our increased oil and potentially LNG exports, what does your company plan to do to take advantage of that? Do you have more investments for us and some jobs?

Mr. ROBERTS. We are looking at LNG. We have a dedicated team looking at LNG opportunities in the marketplace. The first activity we have is in Puerto Rico, where we have small-scale LNG solutions for facilities there. We are very excited about that. It makes a lot of sense in markets where they don't have the scale to produce electricity at a cost that is quite as competitive.

So that's a very good opportunity for us on a larger scale. It really depends on where the price of oil is quite honestly. That is a factor in this.

But Mr. Luhta mentioned the idea of exports on U.S. LNG vessels, something that makes a lot of sense to promote the maritime industry and shipbuilding in this country. So we think there is a lot of opportunity there.

Senator FISCHER. Great. Thank you very much.

Senator Booker?

Senator BOOKER. Thank you very much, Madam Chairman.

I am really curious about the challenges we are having in our country and some of your views in terms of infrastructure investment.

We have an aging infrastructure decaying in every element. We used to keep the top Nation in the globe. We inherited from our parents and grandparents the number one best infrastructure for any country on planet Earth. We have trashed that infrastructure, allowed it to decline dramatically, and we are suffering as a result of that. We know that every dollar invested in improving infrastructure produces at least 100 percent return, in some regions, like mine, even more than that, saving taxpayer money, expanding economic growth, creating more jobs.

Interestingly, though, when we talk about infrastructure, in my opinion, being a mayor of a port city, we forget about the infrastructure for our ports and for multimodal. That is why I was so proud of the FAST Act, as was mentioned already, that we put in some very important grants for freight projects.

However, the country's maritime structure overall, ports, harbors, waterways, is still too much of an afterthought, and I think declining.

I would really like to know, maybe I can start with you, Mr. Roberts, who probably has experience with multimodal port invest-

ments globally, what your perspective is on our country, our competitiveness.

I was with the Secretary of Transportation, Secretary Foxx. He was saying in the Northeast, there are some companies that prefer to use the Canadian ports because they are more efficient and more effective than the ports in the Northeast.

So as someone who really relies on this maritime infrastructure as you are moving goods across this country, what is your overall view of this? And what are some areas that we really need to make investments?

Mr. ROBERTS. Thank you.

There is a lot that needs to be done. You are absolutely right. There is a lot of money. There is a lot of opportunity to make a difference in this country, in infrastructure investment.

As we have gone through a long recession, it is exactly the time to make those kinds of investments. The cost of doing it is relatively low, and the benefits in terms of building confidence in our economy grows because the government has the confidence to make—

Senator BOOKER. Just the economics of it all, the more we wait, the more expensive it gets, not just because when you are trying to fix your roof, the longer you wait, the worse the damage gets, but also because the cost of capital right now is as low as it is going to be for a very long time.

Mr. ROBERTS. Absolutely right.

Senator BOOKER. So if we were running this like America, Inc., as opposed to whatever the mishegas is that we are calling this, the way we are running Congress, if we were the board of directors, we would invest now so we can save a lot of money later, right?

Mr. ROBERTS. Absolutely. In fact, that is one of the things we are doing in Puerto Rico.

We have teamed with the Puerto Rico Ports Authorities to spend \$100 million there on the terminal to completely redo that terminal, bring it up to a very efficient standard and able to handle the new vessels that are coming online there.

It is the right time to do this. It can make a huge difference in the overall economy. And yes, we are falling behind our foreign—

Senator BOOKER. Tell me about that really quick. What are the opportunity costs? What happens when we can't handle the growing demands of industry in our ports?

Mr. ROBERTS. The pace of cargo movement through the port slows down. The cost of moving cargo through the ports, there has been a lot of conversation about ships getting larger and the economics around that are pretty simple. It is to reduce the unit costs. You have 19,000 TEU ships now coming online.

The port infrastructure needed to handle those kinds of vessels requires enormous investment, both under the water in dredging and on the shore side also. And to sort of keep the efficiencies and freight flowing on an efficient basis, those investments need to be made.

Senator BOOKER. Mr. Luhta, I'm really worried about the decline of the U.S. Merchant Marine in general, and the effect it is having on our preparedness, on our economy. Just really quick, in the 30

seconds I have left, what effects did the 2012 reduction of cargo preference from 75 percent to 50 percent have on the U.S. flag international fleet? What impact would further reductions have?

Mr. LUHTA. Initially, it put extreme pressure on the carriers to continue operating their vessels in a tighter budgetary environment. What that means is fewer ships overseas over time, and further cuts would decimate the American fleet. It would reduce the number of ships available, which in turn reduces the number of billets available for the highly trained mariners, both licensed and unlicensed, to gain experience necessary to advance in the pipeline.

So you're going to disincentivize people from coming into the industry new, and you are not going to have jobs available for people to train and work and be qualified to work on these vessels.

Senator BOOKER. Thank you very much for your time, gentlemen.

Senator FISCHER. Thank you, Senator Booker.

Senator Klobuchar?

**STATEMENT OF HON. AMY KLOBUCHAR,  
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Madam Chairwoman and Senator Booker.

And thank all of you. As you know, we have a big port in Duluth, so I care about this very much, and the Great Lakes.

As we struggle with highway and rail congestion, which we have a lot of in our State, shortsea shipping provides an opportunity to better utilize our waterways to ship freight and millions of tons of cargo moved by ship every year in our region. I get there is little intermodal freight that moves by water.

Mr. Roberts and Mr. McAndrews, how can our coastal and Great Lakes waterways play a bigger role in relieving surface transportation congestion and facilitating commerce? One of you or both can take that.

And what are the impediments, by the way, to doing that?

Mr. ROBERTS. Shortsea shipping and coastal container shipping is sort of what the conversation has been about over the last 10 or 15 years on this subject. It is a terrific idea. There are many impediments to making it a reality, one of which is the harbor maintenance tax and the potential to have double taxation for moves that go by vessel instead of by highway or by rail.

There are other things that need to be done to make it an efficient system. I think it is inherently challenged because we have a very, very efficient highway system and rail system to compete with a shortsea coast-wide system, but it is something that is important to continue developing.

Senator KLOBUCHAR. I have been working to crack down on the dumping of foreign steel on our shores and to even the playing field. We have iron ore up in Minnesota. We lost 2,000 jobs up there, or at least the plants are idle.

Denis McDonough, the Chief of Staff of the President, came up to see it. As you know, we're having problems with steel dumping from China and Australia and other countries, but it has affected the steel industry all over America.

Mr. Luhta and Mr. Roberts, can you speak to the foreign dumping of commodities, how they impact your industry, what you know

about it? One of the things the administration has pledged to do is put 38 more inspectors on, because we know there is illegal steel that should not be coming in. We think that is one way we can do this.

Mr. Luhta, do you want to start?

Mr. LUHTA. Well, I think the commodity dumping for a long time has put us at a disadvantage, so any steps that we can take to mitigate that to any degree is going to support the companies that manufacture those products, but down the line also support the jobs that go into building those products.

So from a comprehensive look at the overall economy, the impact is great and absolutely something should be done.

Senator KLOBUCHAR. Mr. Roberts?

Mr. ROBERTS. I would just say the steel industry is critical to the United States. We need to maintain it. We need to make sure that unfair methods of competition are addressed and we align, as the maritime industry also being a critical American industry, with the steel industry. I think we support antidumping provisions.

Senator KLOBUCHAR. OK. Very good.

Just back to the harbor maintenance fund, we know that collects about \$700 million more each year than it spends on dredging and maintenance. That was really frustrating, so the water bill that we passed increased the level of funding that the fund can spend.

Do you think this change will help? And what else would you do to address the backlog? Anyone can take that.

Mr. MCANDREWS. I guess I'll take that one. The last water bill was very, very much in line with AAPA's goals. We have five governing precepts for the use of the harbor maintenance tax. One is full use for its intended purpose. Two is increased equity for donor and energy transfer ports, and other precepts to develop a consensus among our industry.

I would say that the best thing that can be done at this juncture is to continue to progress in hitting the HMT target, which is a phased increase over the next few years until full use is achieved.

Senator KLOBUCHAR. OK. Anyone else?

All right, thank you very much.

Senator FISCHER. Thank you, Senator Klobuchar.

Senator Blumenthal?

**STATEMENT OF HON. RICHARD BLUMENTHAL,  
U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thanks, Madam Chairman. Thank you for having this hearing.

Mr. Roberts, I was interested in your comments on the situation in Puerto Rico and the potential for LNG to lower the cost of electricity, which is vital to the economic health, long term, of the island.

Is that something that is possible in the near term, so as to alleviate some of the financial straits that now afflict the island?

Mr. ROBERTS. I think the situation, as I understand it, with the Puerto Rico Electric Power Authority, PREPA, which is the electric government-owned utility there, they do burn some LNG. They burn a lot of other heavier fuels.

I think over the long term, there is a potential for converting, and they certainly are interested in doing that. I think in the near term, I don't believe there is a whole lot that can be done at the sort of utility level.

We do see opportunity, as I say, in our small-scale LNG business, and we are continuing to push that.

Senator BLUMENTHAL. Do you have any other thoughts as to having an interest as you do in the economic health of the island, because it is a place where you do business, what can be done to both reform the finances and address the short-term crisis? And is that a very dire crisis literally weeks away?

Mr. ROBERTS. It is. Our position as a company has been to support, as I say, a restructuring mechanism. We were supportive of a Chapter 9 inclusion. That is not the only approach to restructuring that can be taken. The House bill has a different approach, but it is I think directed at the same goal, which is to avoid throwing the situation into chaotic litigation, which is not going to serve anyone's interests.

I think the control board concept, as I understand, has a lot of support on the island, and it does depend on exactly what authorities it has and so on, but there is a need for an accountability there that has been not as solid as it should've been in the past.

There are also other Federal benefits that have been discussed in terms of Medicaid, I believe, and other things that should absolutely be considered as this moves forward.

Senator BLUMENTHAL. I want to turn to the comments that you made about the need for maritime workers, for the skilled engineers and navigators and so forth. I am extrapolating a little bit from your testimony, but essentially your reference to the opportunities for military service veterans in this area and others.

Maybe you can give us a little more in terms of the numbers. You say that, and I'm quoting, "One of the challenges in gearing up this fleet," meaning the 20 to 25 additional vessels that are on track, is "finding highly qualified officers and crew, particularly engineers, to man the vessels." Can you give us some numbers?

Mr. ROBERTS. The number I heard most recently was 74,000 mariner shortfall over the next 10 years. Now that covers all positions in licensed, unlicensed, on the rivers and so on. On the deep-sea side, it is a much smaller number.

But what we have really focused on is to take military service veterans who have sea service, who have training, particularly in the Navy—and I think it is because this industry hasn't seen growth in employment for a long, long time, there hasn't been attention paid to making sure that the training they get and the experience they get in the military is aligned with the licensing that is required by the Coast Guard. So there is just that misalignment there the nobody paid a whole lot of attention to, because there wasn't a real need. Now there is a need for those people.

In fact, this morning, there is a meeting in the Office of the Secretary of Defense to tackle that issue. There is a lot of attention being paid to it.

I don't think there's any competing interests at stake here. I think it is a function of finding a way to help veterans find jobs,

fill the need in the commercial side, and get mariners who are needed for our national security sealift purposes. It can be done.

Senator BLUMENTHAL. I would like very much to follow up. My time has expired, but as I understand it, what you're saying is that these veterans have skills but the licensing requirements are a burden for them unnecessarily in filling jobs that otherwise they would have. Is that roughly it?

Mr. ROBERTS. There are examples of ship captains in the Navy who have more than a decade of seagoing experience, lots of training on systems and so on, who, when they step in to look at their licensing opportunities, would be a third mate under the commercial terms.

So there is a lot of potential to do some good there.

Senator BLUMENTHAL. I will have someone in my office follow up with you. I really appreciate you being here today, as I do all the witnesses who are here.

Thank you very much.

Mr. ROBERTS. Thank you.

Senator FISCHER. Thank you, Senator Blumenthal.

We are waiting for Chairman Thune to come. I understand he is on his way. So if I could, I will ask a couple questions while we wait for the Chairman to come.

Mr. Bourne and Mr. McAndrews, can you elaborate on your experiences with highway and rail connection points at our ports? When we look at the increase in freight movements, what type of projects do you think are the most effective in addressing that congestion? And how are public and private stakeholders assisting in financing these types of intermodal projects?

Mr. BOURNE. I will take a shot at that, Madam Fischer.

I think one of the biggest things that we see on the export side on the West Coast is a lack of infrastructure on the piers as it relates to being able to have portside rail service where intermodal train cars can be switched right to the port.

One of the biggest problems that we experience as shippers on the West Coast, and I'm sure it's probably that way at a lot of the ports, is the congestion or bottleneck getting through the gate and all of the rigmarole that the truckers have to go through to get through the gate and get the containers delivered to the right spot and so forth. So that is a bottleneck.

You can eliminate a lot of that completely, to the extent you can get more intermodal delivered right to shipside, because you don't have truckers involved, you don't have that delay of getting through gates. It is cleared right to the port. Longshoremen can lift them off the railcars and onto the ship.

I think there needs to be a lot more infrastructure available for that kind of activity.

Senator FISCHER. Mr. McAndrews, did you have any comments?

Mr. MCANDREWS. I would. I would like to add, Madam Chair, that a lot of the TIGER grants, and I would expect a lot of the FAST Act dollars, are going to go into "last mile in, first mile out" infrastructure. Our TIGER grants certainly did. It relocated some rail lines coming into the port that not only made for a more efficient interchange and enabled the handling of unit trains, but it closed 16 at-grade crossings and shortened the amount of time that

the train spends in the downtown areas in Pascagoula and Moss Point.

That is just an example of many of the TIGER grant-funded projects that ports have gotten that have been put to use to address that need.

Senator FISCHER. Thank you very much.

I see our Chairman has arrived, and I would recognize Chairman Thune, if he has any comments or questions for the panel.

**STATEMENT OF HON. JOHN THUNE,  
U.S. SENATOR FROM SOUTH DAKOTA**

The CHAIRMAN. Thank you, Chairman Fischer and Senator Booker. Thank you for holding this hearing in, actually, what has become a series of hearings on the state of the U.S. maritime industry.

A safe and efficient maritime transportation system plays a crucial role in supporting and growing the U.S. economy. It is especially true for U.S. agriculture producers, including many in my home state of South Dakota that ship approximately 20 percent of their products to overseas markets. In fact, during the year 2015, U.S. agriculture export totaled nearly \$140 billion.

So I want to thank all the witnesses for being here today, especially Mr. Perry Bourne of Tyson Fresh Meats.

Tyson Fresh Meats, of course, is headquartered in Dakota Dunes, South Dakota, employing about 41,000 people across the country. I'm very proud to say that Tyson Fresh Meats is the largest beef and chicken producer in the United States and one of the largest pork producers.

A strong and efficient supply chain is critical to the company's success, and that includes a reliable maritime transportation network.

So what I would like to do is just ask a couple questions and direct those to Mr. Bourne.

One has to do with the Federal role as it pertains to container weight. What action, in your view, if any, could Federal agencies take to avoid any unnecessary delays or costs come July 1?

Mr. BOURNE. Thank you, Chairman Thune, for asking that question.

I think number one, I would say simply that shippers are very interested in the whole issue of safety. That is one of the primary goals of this SOLAS regulation and the amendments.

As I heard Mr. Roberts mention, in his company, safety is a crucial factor. They start each meeting. The same thing with us.

But I think the issue that we need is we really need to be able to sit down and have some meaningful conversation between shipper exporters and carriers to get this thing done. I don't think it is beyond us. I think that that is doable. It just really has not happened so far. There has been a lot of pushback to fall on the OCEMA guidelines, the Ocean Carrier Equipment Management group, to really limit the only two solutions to that.

If we are not able to come to a conclusion with that, which I hope we can, then I would ask that this committee consider going back to the U.S. Coast Guard and asking them as a member with the IMO to ask for further clarification of that position that IMO has



that there are many ways to achieve the reporting of the verified gross mass, which is really what surrounds this whole SOLAS issue.

I think it is in the best interests of the country to get something done without delay.

The CHAIRMAN. My understanding is that the container weight verification rule may necessitate updates to electronic data interface fields and processes. From a shipper perspective, are electronic data interface providers ready for the July 1 deadline? And are they implementing changes consistently across the industry?

Mr. BOURNE. The only thing that I can tell you about that from a personal standpoint is we have had our folks in our company check. There are two organizations that I am aware of, INTTRA, I believe it is called, and GT Nexus.

These are third-party providers that support electronic interchange of information between shippers and carriers today.

But as I understand it, when we have checked with the companies directly to find out, “Do you have a way to handle the transmission of this information to the carriers to meet the timing deadlines that they have established for receiving this information?” we are told on transload-type shipments, like most of ours are, they do not have that in place right now, and July 1 is around the corner.

The CHAIRMAN. When did you first learn of the container weight rule put forth by the IMO?

Mr. BOURNE. The first time I heard about it was in periodicals. The JOC, *Journal of Commerce*, has had some stories early on, like in October and November 2015.

You may not be aware of this, but the IMO ruling, the amended ruling, came about in 2014. It was, frankly, very hush-hush, so to speak. It was not high on the docket of communication to shippers like ourselves. There was really no outreach to shippers like ourselves, to kind of act as a sounding board on these various changes that were being considered, how we would deal with them, would it interrupt exporting.

Frankly, I’m convinced that it will interrupt the movement of chilled cargo, which is crucial to our company’s business, and that of many agricultural shippers throughout the U.S.

The CHAIRMAN. So it sounds like, as a stakeholder, the shippers didn’t have representation during this development?

Mr. BOURNE. That is correct.

The CHAIRMAN. Let me just close—my time has expired—by saying that, again, I appreciate all the witnesses being here today and offering a potential solution to prevent unnecessary delays and costs for our supply chain.

I think there’s going to be a great need for carriers to sit down with shippers and for both parties to come to a mutually agreeable path forward.

This committee will stay engaged on this issue to ensure that we keep our goods moving safely and efficiently. Clearly, that is an identifiable issue that needs to be addressed.

Mr. BOURNE. Thank you. If I could add one last comment, I think the most important thing that we as U.S. exporters experience is there has not been a lot of activity that has taken place in recent

years to really foster the export growth that is crucial to building our economy back.

Certainly, the SOLAS amendment doesn't do anything to improve efficiencies or to spur export shipments. To the contrary, I think it is going to hurt them.

The CHAIRMAN. Thank you.

Thank you, Madam Chair.

Senator FISCHER. Thank you, Chairman Thune.

Senator Booker, did you have any comments?

Senator BOOKER. No.

Senator FISCHER. Thank you.

With that, the hearing record will remain open for 2 weeks. During this time, Senators are asked to submit any questions for the record.

Upon receipt, the witnesses are requested to submit their written answers to the Committee as soon as possible.

With that, I would like to thank our witnesses for being here today. Great hearing.

We are adjourned.

[Whereupon, at 11:29 a.m., the hearing was adjourned.]

# A P P E N D I X

## COMMENTS OF THE GLOBAL CONSOLIDATORS WORKING GROUP (a working group of the of major consolidators in the U.S. Trades)

The following comments are submitted by the Global Consolidators Working Group (GCWG) for consideration by the Surface Transportation and Merchant Marine Infrastructure, Safety and Security Subcommittee, United States Senate. We appreciate this opportunity to discuss the state of the U.S. maritime industry and emphasize on the most pressing issue of the International Maritime Organization (IMO)'s recent amendments to the International Convention for the Safety of Life at Sea (SOLAS).<sup>1</sup> The SOLAS amendments will require (as of July 1, 2016) that a shipper verify the gross mass (VGM) of a container's cargo/contents to the underlying carrier and a terminal operator. Failure to provide such a VGM verification will result in a carrier refusing to load the container.

The GCWG is a working group of the leading consolidator non-vessel-operating common carriers ("NVOCCs")<sup>2</sup> in the foreign commerce of the United States.<sup>3</sup> The GCWG includes: CaroTrans International, Inc., Ecu-Line N.V., Shipco Transport Inc. and Vanguard Logistics Services (USA), Inc. Each of the GCWG companies engages in co-loading activities (*i.e.* consolidation of Less-than Container Load or LCL shipments), as well as Full-Container Loads (FCL). For LCL shipments, the individual GCWG companies act as the "Masterloader" or the consolidator of the LCL shipments and then tender the consolidated container to the underlying ocean carrier for transport.

### I. Background on Consolidation Sector

The LCL or consolidation market is unique from other sectors of the ocean transport industry. In particular, the GCWG companies specialize in providing ocean and related multimodal transportation services for small and medium-sized companies (typically other freight forwarders or NVOCC's), thus leveraging combined freight volumes, cost-savings for smaller companies and increased efficiencies across the supply chain—including benefits to ocean carriers who accept the consolidated shipments from the Masterloader NVOCC.

It is important to understand how a consolidation shipment functions, both operationally and commercially. In terms of a chain of custody for LCL shipments, a variety of parties are involved in each transaction: actual shippers/consignees (that look to the co-loading forwarder or NVOCC for services); the co-loading forwarder or NVOCC (that looks to the Masterloader for service); the Masterloader (that provides consolidation services to the down-stream parties); third-party truckers (that may receive the consolidated container from the Masterloader for transport/dray carriage to the terminal); the ocean carrier (that provides the ocean transport); and terminal operators (both at origin and destination). At times, third-party Container Freight Stations (CFS) may be utilized as part of the overall consolidation process. The consolidation market has become embedded in today's global shipping environment.

For each consolidated/LCL shipment, multiple bills of lading are issued—by the co-loader NVOCCs, the Masterloader, and, ultimately, the ocean carrier. By way of background, the Masterloader accepts the LCL shipments from other NVOCCs and issues a House Bill of Lading (HBL) or receipt to each of the individual NVOCCs that tender freight for consolidation; there could be dozens of such HBLs issued by the Masterloader. The shipper and/or consignee party on the Masterloader HBL will

<sup>1</sup>International Convention for the Safety of Life at Sea, as amended.

<sup>2</sup>Non-vessel-operating common carrier is defined as "... a common carrier that—(A) does not operate the vessels by which the ocean transportation is provided; and (B) is a shipper in its relationship with an ocean common carrier." See 46 U.S.C. § 40102(16).

<sup>3</sup>Foreign Commerce of the United States as referenced herein includes all the major North-South and East-West trades and sub-trades, such as the Trans-Atlantic Eastbound/Westbound trades, Trans-Pacific Eastbound/Westbound trades, etc.

reflect the tendering co-loader NVOCC, as well as its overseas agent, affiliate or branch offices. When the tendering co-loader acts as an NVOCC (in contrast to when it acts only as a forwarder), it will issue its own HBL to its shipper-client (often the actual, underlying shipper); depending on the number of co-loader NVOCCs in a consolidated container, these HBLs may be in the dozens. Once the consolidated shipment is tendered to the ocean carrier, a Master Bill of Lading is issued by the ocean carrier, reflecting the Masterloader as the shipper/consignee and the Masterloader's overseas agent, affiliate or branch office.

For purposes of the SOLAS amendments and VGM requirements, an understanding of the above is critical, since securing weight verifications will depend on each of the above actors—a disruption or misunderstanding by even one of the parties in the chain of custody may result in a weight miscalculation.

## II. SOLAS Amendments: GCWG Position

The GCWG appreciates the work of the IMO on this important subject, but cautions implementation as currently envisioned may lead to unintended consequences, such as delay of shipments, additional costs for shippers and U.S. exporters, congestion at the ports, and, potentially, a reduction in U.S. exports, which will affect almost all sectors of the international trade community, including the countless small and medium-sized customers serviced by each of our companies. Accordingly, the GCWG submits the following for further consideration by the Subcommittee and other stakeholders, including the United States Coast Guard (USCG) as the Competent Authority under the IMO SOLAS Convention, as the shipping industry approaches the July 1 effective date for the SOLAS amendments.

In sum, the GCWG supports the following:

1. Reasonable delay of the effective date for the SOLAS amendments of twelve (12) months (thus, the new effective date would be July 1, 2017)
2. Consideration by USCG (and other Competent Authorities) of requiring the terminal operator act as the verifier of a container's Gross Mass;
3. Further outreach to the shipping community—all sectors—by USCG during the additional 12 months under a delay; and
4. Increased transparency on behalf of the IMO regarding the global implementation status of the VGM rule.

Our companies believe the above positions are practical, balanced and will enable the entire global supply chain community to work constructively as the eventual SOLAS VGM effective date approaches. Our companies acknowledge implementation of the VGM amendments is a near-certainty. We support further awareness of the importance of the amendments to all members of the international shipping community—but believe additional time and further consideration of how best to achieve VGM certification are required to ensure the true objective of the IMO's work is realized.

## III. Request for Delay

We understand that under the terms of the SOLAS convention and, specifically, the VGM amendments a Member State, such as the United States, has the authority to delay the effective date of up to twelve (12) months. While all Member States must in principle comply with amendments to the Annex of the SOLAS Convention other than Chapter I by the time they enter into force, individual Member States may nonetheless delay implementation of such amendments for a period not longer than one year from the date of entry into force.<sup>4</sup> Member States may do so by notifying the Secretary-General of the IMO before the date set for entry into force.<sup>5</sup> In the instant case, the VGM amendments amend Chapter VI (Carriage of Cargos) of the Annex to the SOLAS Convention, therefore, a 12-month delay would be permitted per the provisions of the Convention, and could be requested by June 30, 2016.

The GCWG respectfully submits that a 12-month delay would not only be permitted but also warranted here. Pursuant to Resolution MSC.380(94),<sup>6</sup> the industry is readying the necessary arrangements in order to comply with the VGM amendments. However, the GCWG submits that additional time is justified to negotiate commercial arrangements for the allocation of responsibility and additional costs among shippers, carriers, and terminal operators in the event containers are weighed in-terminal. Additionally, it is unclear whether the existing weighing equip-

<sup>4</sup> SOLAS Convention, Article VIII(b)(vii)(2).

<sup>5</sup> *Id.*

<sup>6</sup> MSC.380(94).

ment, certified and calibrated at a state level, is sufficient in number to allow for the smooth flow of container traffic into terminals.

Accordingly, a 12-month delay would be appropriate as it would allow the industry to make the legal and operational arrangements necessary for the proper implementation of the VGM amendments. Further, this delay would not compromise the policy objectives intended by the VGM amendments. Rather, it would contribute to their proper implementation and help prevent unnecessary delays in the supply chain as a result of a swift and improper implementation due to lack of time.

Alternatively, the GCWG respectfully requests USCG consider an exemption for an additional 12 months from the VGM requirements specifically for the consolidation market. As noted, the LCL sector is unique from FCL shipments, involves potentially dozens of individual shippers in relation to the Masterloader in one, consolidated container and holds the possibility of creating significant disruption and confusion for the industry, if the July 1, 2016 effective date remains.

#### **IV. Terminal Operators Should Provide VGM Certification**

Based on our understanding of global supply chain operations, the flow of container traffic and the realities of port operations, the GCWG maintains a terminal operator is best positioned to weigh each container and provide the VGM certification to the underlying ocean carrier. In fact, we understand from discussions with various US-based terminal operators that most containers, if not all, are already weighed upon entry to a port.<sup>7</sup> We support equipping terminals, if they are not already equipped, with the necessary scales to determine the actual weight of each container, prior to lading. The SOLAS amendments require a shipper to provide the VGM certification to the carrier prior to a carrier loading the container. Ideally, our companies maintain that the weighing of a container should be the responsibility of the terminal operators or the underlying carrier, as they are the parties that are best positioned to undertake this exercise, given that a stow plan is the responsibility of the master operating the vessel that provides the ocean transport service on a particular voyage. As a comparison, in the air transport sector, it is the air carrier that is responsible for determining the weight of each airfreight container, also called Unit Load Devices (ULD). The same is true in the surface transport sector, where each motor carrier is responsible for verifying the weight of the cargo/truck load.

By having a terminal operator provide the physical weighing of the container (as instructed by a shipper), the purpose of the SOLAS amendments is achieved, while minimizing unintended disruptions or consequences further up the supply chain. This option makes practical sense, given the proximity of the terminal to the vessel and the critical role that the terminal operator plays in the lading and unlading of a vessel. Should this option be practically achievable prior to July 1, 2016, there would be no need to impose the 12-month delay.

We further note that under current Occupational Health and Safety Administration (OSHA) regulations all outbound containers must be weighed at the terminal to determine the weight prior to being hoisted/loaded.<sup>8</sup> If scales are available at the terminals, containers must be weighed at the terminals. Requiring shippers to also weigh and certify the weight of the container appears to be duplicative and unnecessary given the current regulations and requirements already in place in the United States. These existing regulations underscore that the terminal operator is the most appropriate party to weigh outbound containers.

#### **V. Further USCG Outreach**

We applaud the USCG for its engagement on the subject of VGM, for continuing discussions with members of the international ocean transport community and for its willingness to listen. We further applaud the USCG for taking the position that shippers may comply with the SOLAS amendments by simply providing the cargo

<sup>7</sup>We acknowledge that the weight taken at entry to the port includes the weight of the cargo and container plus the weight of the chassis, truck and fuel; however, we understand that this is already taken into account to determine the container weight for stow plan purposes, so it should not be difficult to account for the additional weight and determine the actual container weight.

<sup>8</sup>29 C.F.R. 1917.71(b)(3) and (4) (“(3) Every outbound loaded container which is received at a marine terminal ready to load aboard a vessel without further consolidation or loading shall be weighed to obtain the actual gross weight, either at the terminal or elsewhere, before being hoisted. (4)(i) When container weighing scales are located at a marine terminal, any outbound container with a load consolidated at that terminal shall be weighed to obtain an actual weight before being hoisted. (ii) If the terminal has no scales, the actual gross weight may be calculated on the basis of the container’s contents and the container’s empty weight. The weights used in the calculation shall be posted conspicuously on the container, with the name of the person making the calculation and the date.”)

mass weight—as is the case currently. Yet, GCWG companies believe that an additional 12 months for outreach and preparation prior to the effectiveness of the SOLAS amendments can only provide additional benefits to the USCG (as the enforcer) and both users and providers of containerized ocean transport in the U.S. trades. While we understand that the subject has been pending before the IMO for several years, we fail to see why an additional year could be viewed in any other way other than being reasonable, given the amount of attention that VGM is now receiving from all sectors of the shipping industry and public. As noted above, our companies understand that the SOLAS amendments' effective date is inevitable—it becomes in our view a question of whether we rush towards July 1, 2016 with a litany of questions unanswered or use an additional year to ensure that all such issues are resolved and the entire ocean shipping community—users and providers alike—are prepared properly for implementation. As has been noted (including by the World Shipping Council, OCEMA, TT Club and others), failure to provide the VGM certification could result in sanctions and/or delays, as well as commercial complications for many parties involved in the supply chain.<sup>9</sup> While we understand that the USCG does not intend to penalize shippers for failure to verifiably provide the cargo gross mass, the GCWG submits that without careful consideration of the SOLAS amendment's impact on all parties of the trade, the possibility for operational and commercial disruptions remain real.

#### **VI. Increased Transparency on the IMO's Behalf**

The SOLAS amendment requires that shippers in all IMO Member States provide the VGM. Uniform and consistent implementation across the globe is necessary to successfully implement IMO's latest initiative. This will allow all parties to operate on a level playing field by abiding by the same standards—enforced in a similar way by all Member States. As a global industry, global clarity and standardization are needed.

To date, less than 10 IMO Members appear to have provided some sort of meaningful guidance on the implementation details of the VGM rule. Consequently, our companies—and many others which maintain global operations—are currently unaware as to how IMO Member States will implement the new rule. This lack of information, guidance and transparency makes it nearly impossible for shippers to implement necessary arrangements to comply with the SOLAS amendment at the Member State level. To this end, the GCWG took the initiative to address this issue in an open letter, asking the IMO—as the globally competent authority—to gather and publish a series of vital information regarding the VGM's implementation status. Unfortunately, the IMO has remained silent thus far, thereby exacerbating the challenges that shippers face in complying with the VGM rule on a global scale. With this in mind, the GCWG respectfully calls on the U.S. Government to request from the IMO to enhance transparency on the matter by collecting and publishing the requested information.

#### **VII. Conclusion**

The GCWG companies thank the Subcommittee for consideration of this testimony. We have drafted it with careful consideration given to the IMO's work on container weight verification, the ocean carriers' commitment to improving safety and how shippers will need to comply with the new requirements. We maintain that a delay of 12 months, consideration of the terminal operators providing the weighing of the container, and increased transparency, coupled with further discussions with the trade community will yield the most practical implementation of the SOLAS amendments.

Respectfully submitted,

CAROTRANS INTERNATIONAL, INC.  
ECU-LINE N.V.

SHIPCO TRANSPORT INC.

VANGUARD LOGISTICS SERVICES (USA), INC.

Washington, DC  
May 3, 2016

<sup>9</sup>See generally “Verified Gross Mass Industry FAQs: Implementation of the SOLAS amendments effective from July 1, 2016,” Dec. 2016, [http://www.ttclub.com/fileadmin/uploads/ttclub/Publications/Resources/Document\\_store/SOLAS\\_VGM\\_Industry\\_FAQs\\_Dec\\_2015\\_A4\\_WEB.PDF](http://www.ttclub.com/fileadmin/uploads/ttclub/Publications/Resources/Document_store/SOLAS_VGM_Industry_FAQs_Dec_2015_A4_WEB.PDF)

NATIONAL ASSOCIATION OF MANUFACTURERS  
*Washington, DC, May 4, 2016*

United States Senate,  
 Commerce, Science, and Transportation Committee,  
 Subcommittee on Surface Transportation and Merchant Marine Infrastructure,  
 Safety and Security,  
 Washington, DC.

Dear Chairman Thune, Ranking Member Nelson, Chairman Fischer, and Ranking  
 Member Booker:

The National Association of Manufacturers (NAM) appreciates the bipartisan effort you have undertaken to review the implementation of the International Maritime Organization's (IMO) International Convention for the Safety of Life at Sea (SOLAS) Container Weight Amendment by the United States Coast Guard (USCG).

Manufacturers have been extremely concerned about possible delays of shipments, new burdensome requirements and additional costs borne by this new international regulation. The lack of clarity, transparency and formal guidance from the USCG on implementation and enforcement were critical themes addressed in your recent hearing. Manufacturers are committed to complying with these new requirements to ensure global vessel safety and appreciate your Committee's commitment to addressing shipper concerns.

Efficiency at our Nation's ports is a necessity to meet manufacturers' contractual obligations, serve global markets, grow manufacturing, create jobs and keep pace with our global competitors. The adoption of this IMO amendment to SOLAS took place in 2014 without full participation from a broad range of stakeholders and left manufacturers facing practical implementation issues that had not been taken into account when this issue was first presented by the ocean carrier industry. As the July 1, 2016 implementation deadline approaches, manufacturers had received limited, informal information from the USCG on the implementation and enforcement of this amendment. Manufacturers have focused efforts on requesting greater clarity as to how this requirement will be enforced. To that end we thank the Committee's assistance in seeking answers for shippers. Within eight days of your hearing, the USCG released the April 28 Marine Safety Information Bulletin. This document provides shippers an important written answer to the USCG interpretation of the container weight amendment and its enforcement.

In light of this very recent release, shippers may now find some relief concerning the practical issues with implementation. However, in order to ensure the efficient movement of cargo and prevent unintended delays, manufacturers strongly recommend the USCG go further to address all concerns, as global harmonization and implementation still remain unknown, and possible changes to cut-off times at ports may continue to be an issue. Modern manufacturing relies on just-in-time inventories, which makes the on schedule arrival of imported feedstocks and inputs critical to business operations. And any changes made to the cut-off time for a verified weight, as referenced in the Ocean Carrier Equipment Management Association (OCEMA) "no docs—no load" policy, could cause shipment delays and would be detrimental to manufacturers' ability to meet contractual obligations and remain competitive in a global marketplace.

Manufacturers appreciate the commitment to safety embodied by the IMO, but request consistency and clarity to properly implement this rule in coordination with our global trading partners. As these issues are worked through in a transparent setting, a phased approach to implementation or delay should not be discounted.

Thank you for your attention to this critical issue.

Sincerely,

ROBYN M. BOERSTLING,  
*Vice President,*  
*Infrastructure, Innovation & Human Resources Policy.*

